COUNCIL MEETING

OCTOBER 23, 2019

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Arryl Kaneshiro at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, October 23, 2019 at 8:30 a.m., after which the following Members answered the call of the roll:

Honorable Arthur Brun (present at 1:43 p.m.)

Honorable Mason K. Chock

Honorable Felicia Cowden

Honorable Luke A. Evslin

Honorable Ross Kagawa (present at 8:32 a.m., excused at 12:30 p.m.)

Honorable KipuKai Kuali'i

Honorable Arryl Kaneshiro

APPROVAL OF AGENDA.

Councilmember Chock moved for approval of the agenda, as circulated, seconded by Councilmember Kuali'i.

Council Chair Kaneshiro: Is there anyone in the public wishing to testify on the agenda?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Seeing none, members, is there any discussion?

The motion for approval of the agenda, as circulated, was then put, and carried by a vote of 5:0:2 (Councilmembers Brun and Kagawa were excused).

Council Chair Kaneshiro: The motion is carried. Clerk, next item, please.

MINUTES of the following meetings of the Council:

September 25, 2019 Council Meeting October 9, 2019 Council Meeting

October 9, 2019 Council Meeting

October 9, 2019 Public Hearing re: Bill No. 2758

Councilmember Chock moved to approve the Minutes as circulated, seconded by Councilmember Kuali'i.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on the Minutes?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Seeing none, is there any discussion from the Members?

The motion to approve the Minutes, as circulated, was then put, and carried by a vote of 5:0:2 (Councilmembers Brun and Kagawa were excused).

Council Chair Kaneshiro:

The motion is carried. Next item.

CONSENT CALENDAR:

C 2019-227 Communication (10/03/2019) from the County Attorney, transmitting for Council information, the Quarterly Report on Settled Claims filed against the County of Kaua'i from July 1, 2019 through September 30, 2019.

C 2019-228 Communication (10/10/2019) from the Deputy County Engineer, transmitting for Council consideration, a Resolution Authorizing The Mayor Or The Director Of Finance Of The County Of Kaua'i To Enter Into An Intergovernmental Agreement With The State Of Hawai'i, Department Of Health For A Loan From The State Water Pollution Control Revolving Fund For The Līhu'e Wastewater Treatment Plant (WWTP) Process Improvements, Project No. C150059-20.

C 2019-229 Communication (10/14/2019) from Councilmember Cowden, transmitting for Council consideration, a Resolution Proposing A Charter Amendment Relating To Qualifications For The Chief of Police.

Councilmember Kuali'i moved to receive C 2019-227, C 2019-228, and C 2019-229 for the record, seconded by Councilmember Chock.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on the Consent Calendar?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Seeing none. Is there any discussion from the Members? Councilmember Cowden.

Councilmember Cowden: Can we talk more robustly about the Wastewater Treatment Plant item later on?

(Councilmember Kagawa was noted as present.)

Council Chair Kaneshiro: Correct. It will be a resolution, later in the meeting.

The motion to receive C 2019-227, C 2019-228, and C 2019-229 for the record was then put, and carried by a vote of 6:0:1 (Councilmember Brun was excused).

Council Chair Kaneshiro:

Next item.

COMMUNICATIONS:

C 2019-230 Communication (09/30/2019) from the County Attorney, requesting Council approval of the indemnification provision contained in the "Conditions of Use" of the State of Hawai'i Application for use of Judiciary Facilities, and approval to execute the necessary forms on behalf of several departments/agencies for a period of use through November 2020: Councilmember Kuali'i moved to approve C 2019-230, seconded by Councilmember Cowden.

Council Chair Kaneshiro: Are there any questions on this item? Is there anyone in the audience wishing to testify?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Seeing none. Is there any final discussion from the members on this item?

The motion to approve C 2019-230 was then put, and carried by a vote of 6:0:1 (Councilmember Brun was excused).

Council Chair Kaneshiro:

Motion carried. Next item. *

C 2019-231 Communication (10/01/2019) from the Emergency Management Administrator, requesting Council approval to receive and expend State funds, in the amount of \$790,000.00, from the United States Department of Homeland Security, via the State of Hawai'i Department of Defense, to be used to enhance the capability of State and local units of government to prevent, deter, respond to, and recover from threats and incidents of terrorism, as well as "all hazards" catastrophic preparedness initiatives: Councilmember Kuali'i moved to approve C 2019-231, seconded by Councilmember Chock.

Council Chair Kaneshiro: Are there any questions? Councilmember Cowden, maybe ask your question and then whoever can answer it, can come up.

Councilmember Cowden: I think Chelsie is fine to come up. I wanted to have a little bit of an overview of what this is. Seven hundred ninety thousand dollars (\$790,000.00) is a lot of money and "terrorism" and "all hazards" are broad words, so I just wanted information of what it is. This is a recurring grant, right? First of all, thank you and to whoever else does the hard work for the grant.

There being no objections, the rules were suspended.

CHELSIE SAKAI, Emergency Management Senior Staff Officer: Chelsie Sakai, Kaua'i Emergency Management Agency (KEMA), Senior Staff Officer. Yes, it is a recurring grant and we do get it every year. It is a preparedness grant, it is a non-disaster grant, and it helps us to prepare for, respond to, and recover from all sources of hazards. The terrorism nexus is a result of how the grant started, which was after September 11 (9/11) and so the approach is all hazards. It could be anything from an active shooter event to a fire to hazardous materials, anything...it just broadens what we are able to use the funding for.

Councilmember Cowden: I appreciate the list here that you have with the Satellite Communication Devices, Ballistic Protective Equipment...does a percentage go to the Police Department and a percentage to the Fire Department? How is this money split up?

Ms. Sakai: We come together as a group; us, Police, Fire, and other stakeholders. There is a requirement of the grant that twenty-five percent (25%) of the funding has to support law enforcement activities, but that is a statewide requirement because this is a statewide grant, so anywhere in the State so long the twenty-five percent (25%) is met with median law enforcement needs.

Councilmember Cowden: Does that mean that the other seventy-five percent (75%) is not attached to any particular group and that it is just open?

Ms. Sakai: Yes as a group we work together to decide what the priorities are for the year.

Councilmember Cowden: It says, "Construct Training Facility for Public Safety;" are we constructing a new training facility?

Ms. Sakai: Yes. Right now, neither Police nor Fire have a dedicated training facility. They use a lot of schools, which requires scheduling around the school calendar, they use offices, and so what this facility will be is it is a multi-year project and we will have to fund it with a couple years of grant funding. It will be a building that will be built at the Honsador lot in Līhu'e.

Councilmember Cowden: Okay.

Ms. Sakai: The interior is going to be configurable, so they can move the walls, they can have it be the different rooms that they need for the various departments to train and exercise in.

Councilmember Cowden: Will there ever be citizen training in there, too?

Ms. Sakai: Possibly.

Councilmember Cowden: In Las Vegas at our National Association of Counties (NACo) Conference, I went to the piece on active shooter drills and since we had a few little false alarms recently I am just curious if this is addressing that particular type of problem as well.

Ms. Sakai: It could be. Police and Fire are working with the American Medical Response (Medics) much more closer on an integrated response to active shooter things, which is why one of the items is also the Ballistic Protection for Fire and Medics, so that they can enter these sorts of scenes safely as well and then they can use this facility to help them train on that.

Councilmember Cowden: The Ballistic Protection, to me, means bulletproof vests and things as such.

Ms. Sakai: Correct.

Councilmember Cowden: Would we be purchasing that for our Fire Department with these moneys?

Ms. Sakai: Correct, and American Medical Response (AMR), the Medics.

Councilmember Cowden: Okay. Would they be the same kind as what the Police wears?

Ms. Sakai: I am not sure the specifics of what it would be, but it would meet whatever the National Fire Protection (NFP) requirements are, at least for Fire.

Councilmember Cowden: Currently, we do not have that for AMR and Fire.

Ms. Sakai: No.

Councilmember Cowden: Okay. That is good. I see Portable Satellite Phones. Is the All-Terrain Communication Vehicle going to be a new vehicle we are buying?

Ms. Sakai: Yes.

Councilmember Cowden: Which group will own that vehicle? Would that be Police?

Ms. Sakai: Police.

Councilmember Cowden: So, that is going to look different than our Incident Command Center, because it is like a serious four-wheel drive type of piece?

Ms. Sakai: It would be smaller similar to the van that Fire has. Fire has a smaller communications van. It would allow them to get in easier.

Councilmember Cowden: Okay. It says, "Salary and Fringe for Grant Support Position." It says, "Homeland Security Program Support for Kaua'i County," is that under the Planning Department?

Ms. Sakai: Yes.

Councilmember Cowden: Is that to pay for someone within our Planning Department?

Ms. Sakai: No. That is a type of funding that the grant allows. We have a dedicated staff in our office who works solely on the Homeland Security Grant.

Councilmember Cowden: Is that in KEMA's Office?

Ms. Sakai:

Correct.

Councilmember Cowden:

One (1) more person for you all?

Ms. Sakai:

An existing position that...

Councilmember Cowden An existing position, okay. Each year we get money and we add new elements to what prepares us, is that correct?

Ms. Sakai:

Yes.

Councilmember Cowden:

Okay. Thank you so much.

Ms. Sakai:

You are welcome.

Council Chair Kaneshiro:

Councilmember Evslin.

Councilmember Evslin: Thank you for coming today and thank you folks for pursing this grant. Can you talk a little more about the Public Safety Training Facility? You said that this would require multi-year funding, is that expected to be grant money every year for that?

Ms. Sakai: Yes, the same funding. We intend to go for the 2020 Homeland Security Grant for the remaining portion of the facility.

Councilmember Evslin:

Okay.

Ms. Sakai: The facility is going to be done in a phased approach. The first phase is doing the study and understanding what the needs are, pouring the foundation for it, and things like that, while we wait for the second funding to come in, which would actually erect the structure.

Councilmember Evslin:

When do you expect to start construction?

Ms. Sakai: Depending on how the bidding goes and what the cost is. If this money can start us, we can start as soon as we get this money or it will probably be a year from now.

Councilmember Evslin: Okay, great. I am somewhat aware of the limitations of our current training facilities and I think it is important to have a dedicated space for them.

Council Chair Kaneshiro: Are there any other questions from the members? Councilmember Kuali'i.

Councilmember Kuali'i: Thank you for being here. Can you say more about this "All-Terrain Communication Vehicle"? It costs two hundred fifty thousand dollars (\$250,000)—is that a one-time purchase?

Ms. Sakai:

Yes.

Councilmember Kuali'i:

It costs that much?

Ms. Sakai:

For the vehicle and the communications

equipment that will be built into it...

Councilmember Kuali'i:

All the equipment that goes into it...

Ms. Sakai:

Yes.

Councilmember Kuali'i: Does it have an unusual maintenance cost every year being that it is fully equipped and is probably sensitive and expensive equipment?

Ms. Sakai:

As far as I know, no.

Councilmember Kuali'i:

But if it did, could you use grant moneys for

that?

Ms. Sakai: For the sustainment of the vehicle it would then become an operational cost of the Police Department.

Councilmember Kuali'i:

Okay. When did this grant start?

Ms. Sakai:

After 9/11.

Councilmember Kuali'i: And it is anticipated to continue and you have to apply every year—how does it work?

Ms. Sakai: As long as there is a threat to the Homeland, the Federal Emergency Management Agency (FEMA) will continue to have this funding come through. We do apply through the State. The State of Hawai'i puts in one (1) application for all four (4) counties, so we are a sub-recipient of the grant funds.

Councilmember Kuali'i:

Thank you.

Council Chair Kaneshiro:

Councilmember Cowden.

Councilmember Cowden: When I look at grant compliance, it would seem like some of them are pretty obvious, for example, the buying of the vehicles. We have not needed a vehicle like that so far, is that correct?

Ms. Sakai: In the flood, we did use the fire vehicle and what we found from the flood is that incidents will not always be isolated. Once the storm shifted and hit the eastside and the south side of the island, that van can only be at one (1) place. This gives us the ability to respond to multiple places.

Councilmember Cowden: Are there any grant compliance requirements that I need to be aware of or is it just mostly preparation?

Ms. Sakai: Right. The one that has a few more requirements than the rest is the training facility because it is construction, but it is just that we have conversations with FEMA and very specific on our Environmental and Historical Preservation to ensure that what we are doing is not disturbing the environment more than it needs to be, we are not endangering species, and things like that.

Councilmember Cowden: How big is the building? I am used to seeing a bathroom costing seven hundred thousand dollars (\$700,000), I mean it is kind of unbelievable the costs of our buildings, so three hundred fifty thousand dollars (\$350,000) does not sound like very much for the costs that we end up incurring. You can build a really nice house for that, but it seems here it costs us one hundred fifty thousand dollars (\$150,000) to put in one (1) toilet. How big is this building? What does it look like? Does it have a soft framed structure or a hard framed structure? We do not even have a design.

Ms. Sakai: Because we have to go out to bid for it, but it would be a hard frame, but it is basically a "shell" with walls. There will be no electricity, there is nothing in the building other than walls.

Councilmember Cowden: Not even light?

Ms. Sakai: No.

Councilmember Cowden: Okay. Thank you.

Council Chair Kaneshiro: Are there any other questions from the members? If not, thank you. Is there anyone in the audience wishing to testify on this? Bruce.

BRUCE HART: For the record, Bruce Hart. I am curious as to the restrictions—are there any limitations? In other words, if we had an issue, say

the Police or Fire needed to use some of this equipment, are there any restrictions on them using it? Does it have to be just for a disaster? Are there any past incidents where we have utilized all this preparation? Is there something that I can relate to or the people can relate to? It seems to be a lot of preparation and that is good, but have we actually used it? Thank you.

Council Chair Kaneshiro: Is there anyone else in the audience wishing to testify? Seeing none.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the members? Councilmember Eyslin.

Councilmember Evslin: Just to clarify for Mr. Hart that my understanding is that it is used for general preparation and not just a terrorist event, so for example with our Fire training that is training for all types of fire hazards.

Council Chair Kaneshiro: Is there further discussion? If not, the motion on the floor is to approve.

The motion to approve C 2019-231 was then put, and carried by a vote of 6:0:1 (Councilmember Brun was excused).

Council Chair Kaneshiro: Motion carried. Next item.

C 2019-232 Communication (10/01/2019) from the Emergency Management Administrator, requesting Council approval to receive and expend State funds, in the amount of \$150,000.00, from the United States Department of Homeland Security, via the Hawai'i Emergency Management Agency, to be used to support a comprehensive, all-hazard emergency preparedness system: Councilmember Kuali'i moved to approve C 2019-232, seconded by Councilmember Chock.

Council Chair Kaneshiro: I will suspend the rules. We have a question from Councilmember Cowden.

Councilmember Cowden: Can you explain what additional aspect this adds? I assume this feathers in to what we just approved, but what is this for?

There being no objections, the rules were suspended.

Ms. Sakai: The Emergency Management Performance Grant Program supports functions of our agency, specifically. What we do use it for is we staff positions with it. We currently have two (2) staff that are funded one hundred percent (100%) by this grant.

Councilmember Cowden: Okay. So it is just a reoccurring grant to continue the funding of the staff. I am just happy to be pointing it out to the community, because there is a lot of effort that is put in by our different departments to find funding outside of our local cost of government through taxation. Do you write the grant?

Ms. Sakai:

I do.

Councilmember Cowden:

Thank you for writing the grant.

Ms. Sakai:

Thank you.

Council Chair Kaneshiro: Are there any other questions from the members? If not, thank you. Is there anyone in the audience wishing to testify on this item? Seeing none.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro:

Any final discussion from the members?

The motion to approve C 2019-232 was then put, and carried by a vote of 6:0:1 (Councilmember Brun was excused).

Council Chair Kaneshiro:

Motion carried. Next item.

C 2019-233 Communication (10/07/2019) from the Deputy County Engineer, transmitting for Council consideration, A Bill For An Ordinance Amending Ordinance No. B-2019-856, As Amended, Relating To The Operating Budget Of The County Of Kaua'i, State Of Hawai'i, For The Fiscal Year July 1, 2019 Through June 30, 2020, By Revising The Amounts Estimated In The Highway Fund, to replenish funding for emergency work in opening the river mouth in Waimea and to establish funding for such work through the end of the fiscal year, including design and maintenance of levy gates to relieve and avoid flooding: Councilmember Kuali'i moved to receive C 2019-233 for the record, seconded by Councilmember Kagawa.

Council Chair Kaneshiro: This is just the communication. We will see this item come up later in the agenda, so if we have discussion on it, I would say let us do it then. Councilmember Kagawa.

Councilmember Kagawa:

Can we do it now since he is present?

Council Chair Kaneshiro: The relating Proposed Draft Bill (No. 2760) will come up later on the agenda and I think they were going to have a presentation at that time.

Councilmember Kagawa: Okay.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on the Communication?

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any discussion from the members?

The motion to receive C 2019-233 for the record was then put, and carried by a vote of 6:0:1 (Councilmember Brun was excused).

Council Chair Kaneshiro: Motion carried. Next item.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Chair, the next item is C 2019-234, which we have a relating Executive Session item that we need to take first, did you want to skip that item?

Council Chair Kaneshiro: Yes.

There being no objections, C 2019-235 was taken out of order.

C 2019-235 Communication (10/15/2019) from Councilmember Evslin and Councilmember Kuali'i, transmitting for Council consideration, A Proposed Draft Bill To Allow The Construction Of Tiny Houses In All Zoning Districts: Councilmember Kuali'i moved to receive C 2019-235 for the record, seconded by Councilmember Cowden.

Council Chair Kaneshiro: Again, this item will be coming up as a Proposed Draft Bill for first reading and I know there is a PowerPoint presentation on it, too. Let us take the discussion at that time. Is there anyone in the audience wishing to testify on the Communication?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any discussion from the members?

The motion to receive C 2019-235 for the record was then put, and carried by a vote of 6:0:1 (Councilmember Brun was excused).

Council Chair Kaneshiro:

Motion carried. Next item.

CLAIMS:

C 2019-236 Communication (09/30/2019) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Melinda Yomen, for damage to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2019-237 Communication (10/10/2019) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Joseph A. Sylvester, for damage to his building, pursuant to Section 23.06, Charter of the County of Kaua'i.

Councilmember Kuali'i moved to refer C 2019-236 and C 2019-237 to the Office of the County Attorney for disposition and/or report back to the Council, seconded by Councilmember Cowden.

Council Chair Kaneshiro: testify on these claims?

Is there anyone in the audience wishing to

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the members?

The motion to refer C 2019-236 and C 2019-237 to the Office of the County Attorney for disposition and/or report back to the Council was then put, and carried by a vote of 6:0:1 (Councilmember Brun was excused).

Council Chair Kaneshiro:

Motion carried. Next item.

COMMITTEE REPORTS:

PARKS & RECREATION / TRANSPORTATION COMMITTEE:

A report (No. CR-PRT 2019-02) submitted by the Parks & Recreation / Transportation Committee, recommending that the following be Received for the Record:

"PRT 2019-02 Communication (10/02/2019) from Councilmember Cowden, requesting the presence of the Director of Parks & Recreation, to provide a briefing on County cemeteries, to include:

- Where County cemeteries are located;
- The demographic characteristics of the Hanapēpē Cemetery and areas for possible expansion;
- The Kaua'i Veterans Cemetery newly-funded columbarium expansion, new burial plot site, and a way to open the Cemetery pavilion without disrupting the memorial mosaic that adorns the central area; and
- General rules, regulations, procedures, and costs for families to obtain a grave site for themselves or loved ones in County cemeteries."

A report (No. CR-PRT 2019-03) submitted by the Parks & Recreation / Transportation Committee, recommending that the following be Approved on second and final reading:

"Bill No. 2758 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 17A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO COUNTY BUS FARES, AND ADDING A NEW CHAPTER, RELATING TO COUNTY BUS AND PARATRANSIT CODE OF CONDUCT,"

Councilmember Kuali'i moved for approval of the reports, seconded by Councilmember Chock.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on this?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Seeing none, is there any discussion from the members?

The motion for approval of the reports was then put, and carried by a vote of 6:0:1 (Councilmember Brun was excused).

PLANNING COMMITTEE:

A report (No. CR-PL 2019-12) submitted by the Planning Committee, recommending that the following be Received for the Record:

"PL 2019-04 Communication (09/25/2019) from Committee Chair Chock, requesting the presence of the Planning Director, to provide a briefing regarding ongoing Planning enforcement needs as it relates to increased County compliance issues (i.e., how many cases the County is dealing with, cost, unforeseen issues, et cetera),"

A report (No. CR-PL 2019-13) submitted by the Planning Committee, recommending that the following be Approved as Amended on second and final reading:

"Bill No. 2757, Draft 1 – A BILL FOR AN ORDINANCE AMENDING ZONING MAPS AND DESIGNATIONS IN THE SOUTH KAUA'I COMMUNITY PLAN (County of Kaua'i Planning Department, Applicant),"

Councilmember Kuali'i moved for approval of the reports, seconded by Councilmember Chock.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on this?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Seeing none, is there any discussion from the members? Councilmember Cowden.

Councilmember Cowden: Are we going to touch on this a little bit later, correct?

Council Chair Kaneshiro: The Planning Committee Reports?

Councilmember Cowden: Not the Planning Committee Reports, but the buses—are we going to talk about that later?

Council Chair Kaneshiro: Yes, the bus item is under Bills for Second Reading.

Councilmember Cowden:

Okay.

The motion for approval of the reports was then put, and carried by a vote of 6:0:1 (Councilmember Brun was excused).

Council Chair Kaneshiro:

Motion carried. Next item.

RESOLUTION:

Resolution No. 2019-52 — RESOLUTION AUTHORIZING THE MAYOR OR THE DIRECTOR OF FINANCE OF THE COUNTY OF KAUA'I TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAI'I, DEPARTMENT OF HEALTH FOR A LOAN FROM THE STATE WATER POLLUTION CONTROL REVOLVING FUND FOR THE LĪHU'E WASTEWATER TREATMENT PLANT (WWTP) PROCESS IMPROVEMENTS, PROJECT NO. C150059-20: Councilmember Kuali'i moved for adoption of Resolution No. 2019-52, seconded by Councilmember Chock.

Council Chair Kaneshiro: I will suspend the rules. Can you provide us with a brief overview of this Resolution?

JASON KAGIMOTO, Chief of Wastewater Management: Jason Kagimoto, Chief of Wastewater Management Division. The project that we are going to be doing is we are going to be upgrading a bunch of equipment at the Līhu'e Wastewater Treatment Plant (WWTP). What happened was we previously came by to get approval for a prior resolution based on our engineer's cost estimate of how much the construction costs would be and adding in some additional money for construction management fees. We bid that out and based on the award amount for the construction, we basically do not have enough money to be able to do the construction and the construction management. We are looking to basically increase the resolution amount, so that we can get a bigger loan from the Department of Health and should be able to fund the project.

Council Chair Kaneshiro: Is this an addition to the original resolution or is this the total amount?

Mr. Kagimoto: This would replace it, yes.

Council Chair Kaneshiro: Is this the total?

Mr. Kagimoto: Yes. The prior resolution was three million five hundred thousand dollars (\$3,500,000) and now it is going to be five million dollars (\$5,000,000).

Council Chair Kaneshiro:

Do we have any questions from the members?

Councilmember Cowden.

Councilmember Cowden: Can you just tell me quickly what the additional need is? Why did we bid low when we thought three million five hundred thousand dollars (\$3,500,000), and what is the extra one million five hundred thousand dollars (\$1,500,000) specifically for, if it is added on there?

Mr. Kagimoto:

The items within the bid are the same, it is

just the...

Councilmember Cowden:

They could not do it for that amount?

Mr. Kagimoto: Yes. We received several bids and the award was higher than what we anticipated based on the engineer's construction cost estimate. We have been seeing that for a bunch of the projects we have been bidding out—they have been a little higher than what we have been anticipating.

Councilmember Cowden: This is an existing Wastewater Treatment Facility that has not been working for about seven (7) years, is that correct? Is my memory correct?

Mr. Kagimoto: It is an existing treatment plant, but it has been working. We produce R-1 water that we send to Hōkūala for irrigation. All we are doing is...there are parallel treatment processes, so part of the work that we are doing now is to basically provide for more resiliency and redundancy for the treatment plant. The treatment plant has been currently operating and working properly.

Councilmember Cowden: The treatment plant has been working, but it has parallel plants and one (1) of the parallels has not been working. Is that correct?

Mr. Kagimoto: There are two (2) on the secondary treatment and a portion of it where we actually treat for removal of organic material, one of the equipment that has on the two (2) processes is down right now and we are going to get it replaced.

Councilmember Cowden:

Okay. That is what I am asking.

Mr. Kagimoto:

Yes.

Councilmember Cowden:

It is for the part that is down.

Mr. Kagimoto:

Yes.

Councilmember Cowden: We will be at full operation once this five million dollars (\$5,000,000) is spent.

Mr. Kagimoto:

Yes.

Councilmember Cowden:

Okay, thank you.

Council Chair Kaneshiro: Any there any other questions from the members? If not, thank you. Is there anyone in the audience wishing to testify on this item?

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the members? Roll call vote.

The motion for adoption of Resolution No. 2019-52 was then put, and carried by the following vote:

FOR ADOPTION: Chock, Cowden, Evslin, Kagawa,

Kuali'i, Kaneshiro TOTAL – 6,

AGAINST ADOPTION: None TOTAL -0, EXCUSED & NOT VOTING: Brun TOTAL -1, RECUSED & NOT VOTING: None TOTAL -0.

Ms. Fountain-Tanigawa:

Six (6) ayes.

Resolution No. 2019-53 — RESOLUTION PROPOSING A CHARTER AMENDMENT RELATING TO QUALIFICATIONS FOR THE CHIEF OF POLICE: Councilmember Kuali'i moved to schedule a public hearing on Resolution No. 2019-53 for November 20, 2019 and refer to the December 4, 2019 Council Meeting, seconded by Councilmember Chock.

Council Chair Kaneshiro: Councilmember Cowden, I think this Resolution came from you. Did you want to provide an overview on it?

Councilmember Cowden: This came from the Police Commission. The Police Commission came up...they just hired Todd G. Raybuck as the new Chief of Police. He meets all of the qualifications. They had a great deal of applicants and what became really evident was—what is the existing element, which is five (5) years of police experience was just so far below the bar of what they thought was necessary. We have an extraordinary Police Commission right now, great group of people on there, and having just gone through this process, they felt that it was good to leave

for the future to have more experience because there are a lot of requirements for management, money, et cetera. We actually have a Police Commissioner in here—would you like to come up?

Council Chair Kaneshiro: I will bring them up, because I am pretty sure there might be additional questions for them.

Councilmember Cowden: Okay. It could have gone through the Charter Review Commission as another pathway to go, but the original structure of the Charter is for things to come before the Council and I think for something as important as the Chief of Police, that it is good for the public to know. Therefore, when things come before the County Council it is on television and it tends to make it into the newspaper. It is really important that Charter Amendments are not sort of a "surprise" right before the election, so by bringing it here, I feel like it will pass easily, but it is important for the community at large to understand what we are looking at. From what I saw, there was not complete agreement on everything with the Police Commission in that there was some interest in having qualifications that offer priority for people who come from the island, so I think everyone in the end was pretty happy with what they had. Local knowledge was good, too, but I felt like if it came up before the public that it would be good to have it be seen. Both the Police Commission and the Charter Review Commission are off camera and have low attendance by the broader public, so that is why it is here instead of there.

Council Chair Kaneshiro: Councilmember Kagawa, did you have a question; too?

Councilmember Kagawa: This request came from the Police Commission?

Councilmember Cowden: They came up with the decision of how they would...they felt that it was important to add stronger criteria. Right now, I believe it is just five (5) years of police experience, so it adds quite a bit of criteria in it. Amongst our higher ranking officers, a good number of them would meet this criteria that is on the new resolution.

Councilmember Kagawa: But as of now, the word is out that we have a great Chief of Police, right?

Councilmember Cowden: We have a great Chief of Police. We are not looking to replace him, but he will eventually retire. This is for the next time. They have gone through the experience of trying to hire him and receiving all the different applicants, so coming out of their experience of doing an application and looking at the minimum requirements, this was what they came up with.

Councilmember Kagawa: I feel like we have a great Chief of Police and he is doing a good job, and we are lucky to have him. I do not see the urgency to pass something like this right now when we just hired him.

Councilmember Cowden:

He was a strong advocate for this.

Councilmember Kagawa:

For putting this on right now?

Councilmember Cowden:

Yes. He was a strong advocate for it.

Councilmember Kagawa: I think we should just concentrate on the job, actually. I do not see the urgency of doing it right now. We have a good Chief of Police, from my talks with him—looks like he is going to be here pretty long. Every county struggles to hire a Chief of Police, crime is going up, there are a lot of problems all over the place, hiring a Chief of Police is difficult for every county right now. Whatever is on paper or what have you, yes, it could help, but I think we are fortunate to get a great Chief of Police, and I do not see this as an urgency right now.

Councilmember Cowden: That is exactly why I am bringing it before the County Council rather than just going through the Charter Review Commission because the Council is elected positions like the Charter Review Commission, so people who would have a few positions, similar to yours, they have representation by having this conversation. I personally do support the change given the strength of the Commission that we have sitting there right now. I really value their insights. We have what I think is an extraordinary group, so that was important to me, so I brought it forward here.

Councilmember Kagawa: If I can answer that...I have a bunch of things I think the Police Commission should be looking at and things such as reducing lawsuits that are occurring within the department, and things such as overtime abuse amongst those who are nearing retirement. There are a lot of issues that I would hope the Police Commission could address instead of this type and that is just my opinion, you have yours.

Councilmember Cowden: As Committee Chair of the Public Safety & Human Services Committee, I will put an agenda item on to ask the Police Commission to come and we can have that discussion and a briefing on priorities.

Council Chair Kaneshiro: We do have Ellen Ching from the Boards & Commissions present, if we have questions. Councilmember Evslin and then Councilmember Chock.

Councilmember Evslin: Has the Police Commission drafted some type of letter in support, did they vote on this, or was this just an item for discussion?

Councilmember Cowden: The resolution as written is what I took from what they wrote and then had our staff put it in a proper form for a resolution. It could go back to them to vote on, but it is essentially what they asked for.

Councilmember Evslin: So, they wrote it and voted on it in some fashion or how was it...I was just wondering the process.

Councilmember Cowden: They did not write this, we wrote it. They voted on what they felt was important and they gave it to the Charter Review Commission. I went to the Charter Review Commission as well as to the Police Commission that I would prefer it to come before the County Council so that it has broader vetting than it would get at the Charter Review Commission. There was an agreement, but the Charter Review Commission held on to it in case we did not get around to it. I am bringing it forward right away. If for some reason we choose to not look at this item, that it can still yet go through the Charter Review Commission. I really did feel like something as important as Chief of Police should be brought before the awareness of all the people, which is a lot more likely to happen through the use of Hoʻike and the press.

Councilmember Evslin: In my limited experience here like when we get things from the Salary Commission for the proposed salary changes and any time anything comes from the Planning Commission, we get minutes of the meeting so we can see what the discussion was and what the vote was. Is it possible to get that so we get a better understanding of where they are coming from and where the Commission actually stands on it?

Councilmember Cowden: I am sure that we can request that and being that I attend all of the Police Commission meetings I will say it was a very robust and extensive conversation, so it is an excellent thing for us to be reviewing. I am happy that we have a person from the Police Commission and we can also hear from him, if we choose while we are here, but I would say it was a very quality discussion, it was not a light discussion.

Council Chair Kaneshiro: Councilmember Chock.

Councilmember Chock: This might be a question for the Police Commission and/or Ellen. The question I had is around the criteria on the decision that was made. As Councilmember Evslin had suggested, like our Salary Commission, they come with comparables that lead to what the recommendation is and I would like to be able to see that. If it is not ready, that is fine, but if you could come and just let us know.

Council Chair Kaneshiro: Just to add to that question—what is the Boards & Commissions stance on this Resolution?

ELLEN CHING, Boards & Commissions Administrator: Good morning. Councilmembers, Ellen Ching, Administrator for Boards & Commissions. I am just going to give a thumbnail overview. As you know that the Police Commission went through quite a long process to hire the Chief of Police. During that process they realized that when they looked at the mandatory qualifications in the Charter, they felt that they would like to have that changed to be increased. At the same time, it sort of was an interesting nexus that the Charter Review Commission started meeting to prepare for any proposals that they wanted to put together to get on the ballot. As part of their process the Charter Review Commission issued invitations to all of the Commissions as well as the Administration as to whether anyone wanted to put forward any proposals to the Charter Review Commission. When the Police Commission received that, they started...they already had in their minds and were thinking about a Charter Amendment because of the process they just went through. They went ahead and drafted something and then it was approved by the Police Commission to be presented to the Charter Review Commission, which they did. The Police Commission moved to accept the proposal and then it was transmitted to the Charter Review Commission on September 30th. The process that the Charter Review Commission is using is that they are reviewing from all departments, all proposals and they are deferring until they can gather a list and at some point in time they will make a decision as to what they would like to move forward as a ballot question. I hope that answers your question.

Councilmember Chock: I think what I am hearing you say is that they were not prepared at this point to submit something on behalf of the Police Commission for a Charter Amendment and that is why it is coming through Councilmember Cowden?

Ms. Ching: What they did was they responded to an invitation by the Charter Review Commission to put forward a proposal, so that is the proposal that they put forward to the Charter Review Commission. There was quite a lot of testimony regarding the qualification. Some individuals felt that to have the qualifications stay as it was would allow more people to apply and we do have issues with attracting applicants for top positions. There was really a lot of healthy debate, but in the end they decided that it was a concern from this Police Commission that what they saw is that someone...because the qualification is how it is, if you work in the Police Department for a number of years, not necessarily as an officer, you could still apply for Chief of Police. They felt that it was really important to up the minimum qualifications as stated in the Charter.

Councilmember Chock: For each of the recommendations, are there specific studies or suggestions coming from specific sources that lead to the amounts? We are going from five (5) to fifteen (15) years.

Ms. Ching: I believe one (1) of the compelling testimony that was received and is in the minutes was from our current Chief of Police. He had been looking for quite a while at different job openings and he said he was very surprised that the County of Kaua'i was one of the few that did not require an undergraduate degree. The other thing he testified, too, that was really a pivotal point that we tend to think of ourselves as a small county, because we are the smallest county in the state, but Chief of Police Raybuck testified that actually our police department is a median-sized department. The majority, over fifty percent (50%) of the police departments in the nation are a lot less in number and size than the County of Kaua'i. Based on those two (2) points that he testified, which is in our minutes, that was very compelling for the Police Commission.

Councilmember Chock: Chair Kaneshiro's question as to whether or not the Boards & Commissions support this...

Ms. Ching: The Boards & Commissions is like a blind justice statue. We cannot speak on behalf of the Commissions. I will say that this will be on the Police Commission's agenda, so that they can determine and select a spokesperson to the Council so that as this moves through first reading, second reading, that they will have a designated individual that is authorized to speak on behalf of the Police Commission.

Councilmember Chock: Okay. This is going to go to public hearing and one (1) more meeting, so we only have one (1) more shot at this. If we could prepare for it...we are going to need five (5) votes to pass any Charter Amendment here. While I agree that we should be looking at best standards, we need to make sure we have an impetus for those standards and if that can come via the Chief of Police, which we have not heard from yet or the Police Commission, it would be good to have that type of input prior to our decision.

Ms. Ching: On the next agenda, it will be on the agenda to select a spokesperson from the Police Commission and that individual will be at the next meeting.

Councilmember Chock: Thank you.

Council Chair Kaneshiro: Does the Resolution we have reflect the same resolution that the Police Commission sent to the Charter Review Commission?

Ms. Ching: The Police Commission did not send a resolution. It was mainly a report from their permitted interaction group and I have a copy of that. In the report they are basically stating that it is similar to the resolution, which they wanted to increase the experience level to fifteen (15) years and training in law enforcement, and at least three (3) years performing management

level duties at a rank equivalent to lieutenant or higher, plus an undergraduate degree, therefore, the elements are.

Council Chair Kaneshiro: So it is reflective in this Resolution?

Ms. Ching: Yes.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: That language was voted on by the Police Commission before it was transmitted over?

Ms. Ching: Yes.

Councilmember Evslin: Okay. Thank you.

Council Chair Kaneshiro: Councilmember Kuali'i.

Councilmember Kuali'i: You were saying that on September 30th that what you are talking about is what went to the Charter Review Commission and that they are deferring and will be reviewing it, but is their timeline something that we should consider waiting for or are they saying, "Let the Council move forward with it and we will pass on this particular one for now."

Ms. Ching: It is the Charter Review Commission's process where they have been receiving different proposals from different Commissions, so to keep it on the agenda and to keep it open, they are going to defer. On September 30th, the Police Commission appeared before the Charter Review Commission to have a full discussion regarding the proposal that the Police Commission submitted to the Charter Review Commission. As a matter of course, they will defer, keep it on the agenda, and they will keep all of the items open from different departments that they received on the agenda until they make a final decision as to what they are going to move forward as a resolution.

Councilmember Kualii: I am just curious as to what their timeline is. Do they meet monthly? Would it be their intent to look at this item because it is before the Council? I mean we are now...if we pass this motion today, we have public hearing on November 20th and we have the final decision made by this Council on December 4th. Between now and then, will they come up with something in the meeting and have some type of input to us? Is it even possible according to their schedule? If not, would they in the same way that they deferred it for future consideration, could they work it out with the Police Commission saying, "Okay, we will let the Council deal with it." Is this a faster track? I do not know if there is any concern about that.

Ms. Ching: I would hesitate to speak on behalf of the Charter Review Commission, but it certainly will come up as a matter of discussion on their agenda, because it is still on their agenda and they will be notified that it has been placed on the Council agenda. At that time, they will make a decision and a determination on what they would like to do; take it off their agenda or keep it on.

Councilmember Kuali'i: Or they can come and testify against it to us.

Ms. Ching: Yes.

Councilmember Kuali'i: Thank you.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: Is it correct that the Charter Review Commission Chair Jan TenBruggencate in response to when I suggested that it came before the County Council...and then is it also correct that both the Police Commission Chair Mary K. Hertog affirmed that she would be fine with it coming before Council, as did Chief of Police Raybuck. What Mr. TenBruggencate said was that we will leave the item open to see if the County Council is able to manage it and he made the comparison that the County Council was supposed to be looking at the Auditor position and we never did get around to it. He wanted to make sure that the County Council actually addressed this issue before they took it off their books. The strong implication if it was not directly stated is if the County Council processes this and creates the Charter Amendment that they would let it go. They were just waiting for us to do it and if we did not do it, they would pick it up.

Ms. Ching: I am going to state what is in the draft minutes of September 30th on page 6. Chair TenBruggencate pointed out that the Council Chair two (2) to three (3) years ago asked the Charter Review Commission to set aside the County Auditor decision so that they could take it up themselves and if they did not hire an Auditor, they would put it on the ballot themselves, and they did not. In this situation the Police Commission asked them to consider this. The deliberation process would take some months and if the Council takes it up, they will take notice, and confer with the Council and potentially give what they have or the alternative. He is recommending to the Commission that they do not drop this for now for fear that nothing happens.

Councilmember Cowden: So that is essentially what I said.

Ms. Ching: That is on the September 30th draft minutes to be approved.

Councilmember Cowden: Do you see it in your draft minutes there that both Chief of Police Raybuck and Police Commission Chair Mary Hertog were fine with it coming before the County Council?

Ms. Ching:

I do not see that at this point.

Councilmember Cowden:

It should be in there, they came back up and

spoke.

Council Chair Kaneshiro: If not, you can get back to us. I do not know if the minutes will be finalized prior to our public hearing or prior to our next meeting. You folks can always send it in E-mail and highlight it for us...any of the items that Councilmember Cowden was looking for in the minutes.

Ms. Ching:

Sure.

Council Chair Kaneshiro:

But I know you are looking at draft minutes,

too.

Ms. Ching:

Yes.

Council Chair Kaneshiro:

Councilmember Kagawa.

Councilmember Kagawa: I hope I can speed it along. support the amendments, if it is coming from the Department of Human Resources (HR), the Police Commission, and the Chief of Police himself. I was confused with the process in that we have something coming from the Commission that is coming through a Councilmember and normally if a commission feels strongly that is something is needed to improve the efficiency in government, they propose it and the legislative side will adopt it. It is just funny that it is coming in this manner. It is unusual for me to see it in this manner. The second part was that I did not see the urgency in adopting something like that, because I am hoping that Chief of Police Raybuck will be here longer than a couple of years. I get that implication that he is going to be here for a while, his children are young and I just did not see the immediate urgency to go through the unusual route to pass something like this. I have no problems adopting something that the Commission supports and I surely know that they have a lot of other things in police that they can really help the community by addressing in regards to all sorts of things; like having folks on leave with pay for seven (7) years and those types of things. How can we reduce that number and now he is an Assistant Chief, but there is a lot of important business the Police Commission can be doing and something like this, we have a great Chief of Police, we do not need to rush anything through to get another Chief of Police, because the Chief of Police is here. I hope he stays.

Ms. Ching: As I stated before, it is a little awkward because I cannot speak on behalf of the Police Commission. I can provide you with information as to what happened during open session and in the Police Commission and the Charter Review Commission. This will be on the agenda and I will work with the staff so whoever the Police Commission selects to represent them and speak as well as the Charter Review Commission—to coordinate that, so that they are here at the meeting. When this appeared on the agenda, there was not adequate time for the Commissions to meet and select someone to appear.

Council Chair Kaneshiro: Are there any other questions from the members? If not, thank you. Is there anyone in the audience wishing to testify? Bruce Hart.

Mr. Hart: For the record, Bruce Hart. First, I would like to say to Councilmember Cowden that I appreciate this. It even could cross over to intergovernmental. I believe that we heard Councilmember Cowden's reasons for doing this and I am in agreement with. The public does not have the time often look at how many people come to the Council Meetings. A lot of people are working during certain hours, especially the morning hours, and they do not get a chance to go to the Police Commission meetings or any of the other Commissions. I thought about it myself. Bringing this to the Council because it is televised, people get to see the agencies, which they pay for. They get to participate and be a part of the process. That is encouraging. The fact that Chief of Police Raybuck, whom I think, too, Councilmember Kagawa, we are really blessed—that is the word I use to have gotten such an experienced and competent man to do the job of Chief of Police. So, if he is for it, then I would expect that he meets the qualifications, the Commission is for it, and I, a member of the public am for it also. I would like to see it go on the ballot and I would vote "yes" for it. There is one (1) thing I would like to mention, I know that the Administration has not weighed in and I would like to hear what the Administration has to say. Thank you.

Council Chair Kaneshiro: Is there anyone else in the audience wishing to testify?

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the members? Councilmember Cowden.

Councilmember Cowden: With respect to Councilmember Kagawa's concern about a Chief of Police that we are very happy with right now, that came up and yes, he is a relatively young man, so he might be here fifteen (15) years, but who knows who will be on the Police Commission at that time. It would be quite a bit of

distance between the difficulties of looking at the quality of applicants that came. I do believe that there was quite a number of very high quality applicants, but it could be a long time into the future before it is even thought about again, so what I believe I heard from the Police Commission is when they were invited to look at a change that they could make, they thought to take action now when it was directly in alignment with their experience of interviewing and going through the entire process—they would have a good understanding. We have several police Commissioners that have a strong background in law enforcement management and so it was a right time to do it and that is why it came up. I apologize if this came on to the agenda too early. Both the Chair of the Police Commission is aware of what this is and informally they have seen it and they are fine with what is on there.

Council Chair Kaneshiro: Is there anyone else? Councilmember Chock.

Councilmember Chock: I just wanted to reiterate that I am supportive with changing for the right reasons and I just need to see those reasons. What that would look like is comparables by population and function that we have not seen yet, but I am sure that some of the work has been done and that is how they have come to these figures, so if we could receive that information, that would be helpful. Thank you.

Council Chair Kaneshiro: Councilmember Kagawa.

Councilmember Kagawa: I appreciate the Police Commission for their selection of Mr. Raybuck. I think it was well-deserved. He had the background and The passage of this Resolution and the requirements made does not guarantee we will have a good Chief of Police. Case and example, Chief of Police Louis Kealoha checked off every box by far with his management and everything, but how did that turn out? We need to count our blessings that we picked someone great, exceeded all of the current qualifications that were on there; we lucked out. We lucked out on that selection, because we got a fabulous Chief of Police that as we speak he is correcting a lot of the ills that were happening in there when we did not have a Chief of Police. I did not want to make this issue a big issue because I hope he does not leave for a long time and I want the Police Commission to help our Chief of Police to help in other ways where needed; a lot of things that happened prior to his time, but it does not mean it is not his problem, it is his problem. A lot of those same folks are the ones on leave with pay and trying to fix up the other Chief of Police's mess, basically, or the lack of Chief of Police's mess. We need to correct and find the corrections. Having someone on leave with pay for ten (10) years is unacceptable and it is unacceptable that it is not being addressed by the Commission as a problem and as something that needs to be divulged into. Great Commission, yes, on paper, but let us start doing the dirty work, too. Thank you.

Council Chair Kaneshiro: Is there anyone else? I will be voting in favor of moving this Resolution forward for public hearing and for further discussion. It does bring up the question to me whether this would be something that Fire is looking at also. I know that Fire is in the hiring process now and they have had difficulty in finding a new Fire Chief. If you look at it you would probably be looking at the same qualifications for the Chief of Police as a Fire Chief and I do not know how adding something like this to Fire would help or hinder our process of finding a Fire Chief. It might be a good question to look at—what is going to happen in the future when we have to find a new police chief also? I am willing to see how this goes whether it gets on the Charter, whether it gets on the ballot from us or the Charter Review Commission, I think it is going to be the same. If the Charter Review Commission decides they do not want to put it on and we want it on, we are able to put it on and again, it will take five (5) votes to put this on the ballot when the time comes: five (5) votes to get it on the ballot from the Council. As far as I go, I am willing to move it forward on our side and whether it comes from us or the Charter Review Commission. it makes no difference, it is the same proposal. Councilmember Chock.

Councilmember Chock: Just a thought in our own process and I agree to move it forward, but from our own experience in trying to fill the Auditor position, we have struggled as well in really identifying what the minimum qualifications should be versus what it is we are actually looking for. What we need to take into consideration not only as this body, but certainly the Charter Review Commission is where that flexibility can sit, because once this goes on to the Charter there is no flexibility, so we cannot raise it or lower it; it is stuck where it is. Just things to consider as we move forward, because I think it has hindered our progress as well. Thank you.

Council Chair Kaneshiro: To Councilmember Chock's point, we do have time to hear the requirements and what the justification is, fifteen (15) years versus ten (10) years versus five (5) years and it will be ultimately our decision on what we are comfortable with. Councilmember Cowden.

Council is that having us just experienced what it is to be looking at an Auditor and how we missed the flexibility when we were talking with just the Police Commission when they are the ones coming up with the idea and a rather great discussion, still having the perspective of like what we have gone through. I go to the Fire Commission meetings as well and they are very robustly needing to look at the same dialogue and in that case a very important piece, I believe, with the Fire Commission is having localized knowledge of the currents, the mountains, and all these different aspects are important and that is not currently on the qualifications for the Fire Chief. It does not bring that in there. The goal here is...these are key positions, they need robust discussions, and we only get one (1) more meeting; can we move to have

this go to a committee meeting rather than just giving this one (1) more time? Can we put it on a committee meeting?

Council Chair Kaneshiro: We could defer it to a later time once we have all the information. I guess we will need to find out the timing of when it needs to be passed by the Council to be able to get on the ballot and that would determine where we want our future meetings to go, but as of right now, I think we have time.

Councilmember Cowden: I did not necessarily mean it has to be on a Council Meeting as opposed to a Committee Meeting. It could have come in a Committee Meeting. I think the most important piece is that the community gets a chance to vet this in a way that would never happen if it never came before Council.

Council Chair Kaneshiro: As far as a resolution like this goes, it will go in front of the full Council, it will go to a public hearing, and then back to full Council, and we are able to vote on it then. If we put it into a Committee, then there is going to be an extra meeting and vote. So, it would go to the full Council, public hearing, Committee, and then back to full Council, but we can accomplish it the way it is now. If we need more time then we defer it out in full Council and we will still have the full discussion by all the Councilmembers. Councilmember Kagawa.

Councilmember Kagawa: I just wanted to point out for the record that the County Auditor's situation and the Chief of Police situation is opposite. The County auditor is perhaps too high in order for us to find someone at that pay, to take on the job that may be tough to take in the community if you are the County Auditor whereas the Chief of Police, we want to lift the qualifications higher. Those are not the same, they are opposite.

Council Chair Kaneshiro: Is there further discussion? I do want to say that once the Charter Review Commission has all of their ballot measures ready, we would kindly ask for them to present those also in front of the Council, so that the Council knows what is going on the ballot, the public gets to also hear what is going on the ballot, and any further discussion. Obviously the sooner the better. I know how our timing goes all the time where approving things on the last day and we do not have a lot of discussion on it, but obviously having the discussion here helps us and the public understand what is going on the ballot. With that, the motion is to schedule for public hearing and refer to the December 4, 2019 Council Meeting. Can I have a roll call vote, please?

The motion to schedule a public hearing on Resolution No. 2019-53 for November 20, 2019 and refer to the December 4, 2019 Council Meeting was then put, and carried by the following vote:

FOR MOTION: Chock, Cowden, Evslin, Kagawa,

Kuali'i, Kaneshiro, TOTAL-6*, AGAINST MOTION: None TOTAL-0, EXCUSED & NOT VOTING: Brun TOTAL-1, RECUSED & NOT VOTING: None TOTAL-0.

(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent, but shall be recorded as an affirmative for the motion.)

Ms. Fountain-Tanigawa: Six (6) ayes.

Council Chair Kaneshiro: Next item.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2760) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2019-856, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I, FOR THE FISCAL YEAR JULY 1, 2019 THROUGH JUNE 30, 2020, BY REVISING THE AMOUNTS ESTIMATED IN THE HIGHWAY FUND (Waimea River Mouth Emergency Work – \$625,000.00): Councilmember Kuali'i moved for passage of Proposed Draft Bill (No. 2760) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for November 20, 2019, and referred to the Committee of the Whole, seconded by Councilmember Chock.

Council Chair Kaneshiro: I will suspend the rules. Lyle, can you give us a brief history on this issue and this ask?

There being no objections, the rules were suspended.

LYLE TABATA, Deputy County Engineer: Good morning, Council Chair Kaneshiro, Council Vice Chair Kagawa, and Members of the Council. I am here today to present the background or the genesis for this money bill, which we are seeking and asking for your approval, eventually. The history of this need was a little out of the normal realm of how we would like to do business here at the County. On May 22nd, Mayor Kawakami, Managing Director, and other staff members, including myself were invited to a meeting in the morning to be briefed by the Department of Land and Natural Resources (DLNR) Chair Case and other staff members of her office. We were informed that they had not funded the emergency operation of opening the Waimea River Mouth for this fiscal year (FY) and money was going to run out shortly. The discussion with Mayor and Chair Case was that we will take that under advisement and we will look to seek some kind of solution, but little did we know that running out of money was imminently going to happen within days.

The first call I received from police dispatch, because that was the process that whenever the river mouth closes and starts to flood Waimea Town, they would call dispatch, and dispatch would call the State's on-call contractor to respond. The contractor responded to dispatch saving, "There is no money for the State to pay me anymore, they put me on notice," and we had no idea that this was going to happen. I got a text from Mayor Kawakami asking me to see if we can do something and so I called the contractor to find out what is going on and got his full story and then called our Purchasing Director to get approval to do an emergency procurement. I stated the situation that was happening and that if we, the County of Kaua'i, did not respond, our community members in Waimea Town would incur some damage to personal private property and so I was given the green light. I called the on-call contractor that is contracted by the State and asked them to respond and they agreed to respond. After this initial surprise, we then reengaged with DLNR and said, this courtesy visit that you mention to us was to inform us of the situation, we did not know it was imminent and what are the next steps. They told us they are not planning to fund this, so immediately we got together with our State Legislative team and tried to figure out what the process would be to fund them. Time has passed. The State does not have a means like we do to do a money bill to fund something, unless they call an emergency session. Since that is unlikely, we are here today. We have spent some money and we need to continue to spend money until we can have our Legislative Team introduce a package for the coming legislative session. To-date, we have spent forty-five thousand dollars (\$45,000) for the original contractor. We had an interim contract for one (1) clearing from another contractor and then the original contractor decided that he did not want to continue anymore, because in effect his contract with the State had ended, so we had to do another emergency procurement and hire another contactor. To-date, we have spent... I will round up, one hundred ten thousand dollars (\$110,000). I will have Mr. Tresler explain the details of all the money and then we are putting in money to fund the balance until the Legislature can fund this action.

MICHAEL TRESLER, Fiscal Management Officer: Michael Tresler, Fiscal Management Officer for the Department of Public Works. Just to add to what our Deputy County Engineer has already explained, the work that we are talking about is the work for the contractor to open up the Waimea River to alleviate the water flow and the flooding in Waimea Town. He explained the initial emergency call-out, emergency contractor of one-time, I think it was Wally Rita. Then we went out for another subsequent emergency procurement, which was awarded to Pacific Concrete Cutting and Coring (PCCC), which is still in effect. We did a more formal procurement. We are in the process of contracting that and that is the balance of the money that is being requested that will fund this contractor to do another thirty (30) call-outs. At that point, that is all that has been requested for and is expected to happen. Now, what determines the call-outs is a number of different factors and I think Deputy County Engineer Tabata can explain that better, but it is a function of tides, how much sand is there, water flow in the river, and...

Mr. Tabata: And surf.

Mr. Tresler:surf. That will trigger alarms and flooding in the town and call-outs. We really cannot give you an accurate picture of how long this will last, because there are a lot of factors that come into play. There is a lot of historical data that Ralph Cushnie provided to us so that we have an idea of what to expect. It is very much related to weather.

Mr. Tabata: Yes. The second half of the money bill, the three hundred eighty thousand dollars (\$380,000)...we are not aware of how often this was happening and the whole situation in Waimea to the extent that we are experiencing now, directly. With this money, we are also beginning an engineering study to help us identify some needs, which we have looked at together with our consultant as it points to the system meaning, the drainage system from the Waimea Town and the River itself. They are working on a cost estimate of what it would take to dredge the entire Waimea River of which then we are going to present to the United States (U.S.) Army Corps of Engineers to do a project to do the dredging and then to fix this valve station that we have in Waimea Town. There are thirteen (13) valve stations from the beginning of the levee all the way down and this particular last station is at the Ke Ali'i drain of Waimea Town, which is the master drain that drains from inside of the valley, outside of the river into these five (5) valve stations; five foot diameter station, that we have silted. It is totally silted, because whenever the river mouth closes, the velocity of water stops and whatever silt that is in the river water separates and desilts. Right now our valve station is totally silted up and we have valves that are partially open, completely closed, and one (1), that our Roads crew tried to clear so that it could close, they broke a valve. We are in the process of doing the procurement document and creating a plan so that we can go in there, create a dam around our valve station and getting our Army Corps of Engineering maintenance permits, so that we can get in there and clean this section out and make it operable again. We are also looking at some stop gap solutions, where we would also have to dredge the Ke Alii canal and design of a pumping station that hopefully can be another stop gap measure. We have identified that the core of the problem of what is going on is the silting in the Waimea River. The State owns the river and it is our contention that they are responsible for that. There is Hawai'i Revised Statutes (HRS) that I have brought forward previously when we talked about storm debris and storm debris management, the State takes care of State-owned property. private property landowners take care of their own property, the County is responsible for County property and ensuring that private landowners clear their area. The Waimea River is owned by the State and so there is discussion ongoing with them and they are reluctant to work on dredging. At this point we are open to questions.

Mr. Tresler: If I can add just to be very clear, there is in our...not even in our opinion, in the law, there is clear delineation between the river,

the river mouth, and the levee. The levee has been County responsibility, because we have been the local agency that has worked directly with the Army Corps of Engineers and so there is that function of that drainage system, which he mentioned earlier, not to confuse you. We were hoping to push off a lot of this presentation in details to the Committee Meeting and not get into the "bushes" so to speak and get into all these details, but basically that is what we are facing. What we are saying is based on opinions from engineers, which is why we are asking for the funding to get professional opinions based on their work and professional work from the engineers is that the silting of the river and the non-dredging of the river, which is the responsibility of the State has not been done. Therefore, it has been a negative impact on our systems. Yes, we have some maintenance to do on our systems, but then this contract would also help us to address that need. We know what we need to do, but again, when we have a professional design firm in there, that also helps us exactly figure out what is the best method and what things should be done to take care of our responsibilities. In my simple Layman's terms, if you have time, we will show you the entire presentation in the Committee Meeting with pictures and where things are located and so forth...that is the ask so we can actually come up with solutions backed by hard data.

Mr. Tabata: We should have more of a sound presentation from the engineering firm working with us.

Council Chair Kaneshiro: Councilmember Kuali'i, Councilmember Chock, and then Councilmember Kagawa.

Councilmember Kuali'i: The key phrase you said was, responsibilities," but I almost wish you came to us with two (2) separate resolutions. One (1) where we are helping the State and funding the things that they cannot fund at this time, but we are going to work with the Legislature to make sure they reimburse us for that, and then the other one (1) where we are funding what we are responsible for. If anything, when you come back to us in committee, bring a breakdown of these dollar amounts. How the six hundred twenty-five thousand dollars (\$625,000) total up by category, where we are spending on behalf of the State to do the things that they have not done, and where we are fixing our valve station or drainage, things that we are responsible for. I know you said, too, that some of that is worst off because the State has not done their part and maybe there is a formula for figuring out the dollars behind that as well. I definitely need to see how that is broken down. The other piece is to ensure that the State will reimburse us. When you met with DLNR, you talked about how they brought it to your attention and a couple days later here you have this problem and that was a surprise to you, but then when you went back to them and asked them what the next steps were, they said. "They would not be funding it." Was their response, "They are not funding," just because they do not have the money at this time and they will not have the mechanism to fund it or was it, "We are not funding it, you fund it"? Maybe there

should be some sort of Memorandum of Understanding (MOU) or some type of agreement at this point so that when we are expending the funds, which we have to. because we have to protect our residents in the eminent property damage and what have you...God forbid any kind of harm to people's lives as well, so we have to do it. but we need to make sure we are able to hold the State accountable for reimbursing us for the parts that they are responsible for.

Mr. Tresler: Councilmember Kuali'i to address your first request. We have it broken out in the Resolution by those costs for that very reason, so that we would be seeking that reimbursement from the State, so it is broken out by the two hundred thousand dollars (\$200,000) and the forty-five thousand dollars (\$45,000)—that is directly attributed to the opening of the river mouth work.

Councilmember Kuali'i: So the hundred two dollars (\$200,000) and the forty-five thousand dollars (\$45,000) is directly attributed to the State?

Mr. Tresler:

Yes.

Councilmember Kuali'i: But the three hundred eighty thousand dollars (\$380,000) you are saying is all our part?

Mr. Tresler:

Yes.

Mr. Tabata: Part of it is the study for the dredging of the river, so we are saying that it is the State's...

Councilmember Kuali'i:

The dredging of the river that the State is

responsible for?

Mr. Tabata:

We are going to turn over to them this study

to help them fund this...

Councilmember Kuali'i:

To motivate them to do their job.

Mr. Tabata:

Yes.

Councilmember Kuali'i:

Have you been working with our Legislators

and our Senate President?

Mr. Tabata:

Yes we have.

Councilmember Kuali'i: How much of that three hundred eighty thousand dollars (\$380,000) is for the study that you are talking about?

Mr. Tabata:

We will get that for you.

Councilmember Kuali'i:

Okay. Break that down as far as...

Mr. Tabata:

That is not broken down.

Councilmember Kuali'i: I want to know the piece that is for the study, which again, we are doing on behalf of the State for them to do their job, which they have been negligent at for quite a while now and now we have all these problems and these additional expenses.

Mr. Tresler: In the next meeting we will have an estimate, because these are all just estimates and so the estimated cost for that portion.

Councilmember Kuali'i: As far as the two hundred thousand dollars (\$200,000) and the forty-five thousand dollars (\$45,000), that is the State's responsibility, in your discussions with DLNR, they have accepted that? Is it guaranteed that we are going to get this two hundred forty-five thousand dollars (\$245,000) back from the State?

Mr. Tabata:

No, there is no guarantee.

Councilmember Kualii: Can we get something in writing from them? It is their responsibility, correct, you said that.

Mr. Tabata: Well our interpretation with our county attorneys is stating that because of HRS 46-11.5, which was enacted in 1986, it states, "It shall be the responsibility of the County to maintain all channels, streambeds, streambanks, and drainage ways unless such channels, streambeds, streambanks, and drainage ways are privately owned or owned by the State. In which event, channels, streambeds, streambanks, and drainage ways shall be maintained by their respective owners."

Councilmember Kuali'i:

So...

Mr. Tabata:

This river is owned by the State.

Councilmember Kuali'i:

Right, so have you put in...

Mr. Tresler:

Just to add to that.

Councilmember Kuali'i: ...that to DLNR when you spoke to them and have they agreed that you are correct?

Mr. Tabata: Yes.

Mr. Tresler: Councilmember, it is an ongoing battle with them on this issue and this goes back from the time they enacted the law and then we, through the impacts of the flood in 2018, we were still dealing with that. It has been super difficult and challenging and to get into a lot of details here is...I would like to save it for our next meeting. We can provide all the evidence and support. Really in a nutshell, they are responsible, it is theirs, they had a contract, they were paying for it, they stopped paying the contract, and that is why we are here today. We have a call-out list or emergency list and that list between us and the State shows who is responsible for where and this clearly was on their list as their responsibility, like the Wailua River Mouth is and so forth. In our minds it is not a question. In someone else's mind, they can try and make up any argument they want, we cannot control that, but what we know of, the practice, what has been done, and what has been clearly documented shows that it is the State's responsibility.

Councilmember Kuali'i: Thank you. I look forward to the details and how the three hundred eighty thousand dollars (\$380,000) breaks down.

Mr. Tresler: Thank you.

Council Chair Kaneshiro: Councilmember Chock.

Councilmember Chock: I know you want to get into this at a later time, so I will hold my questions. At this time I have three (3) questions. The first is really about that question that Councilmember Kuali'i has brought up about whose responsibility it is and I know in your response initially there are some kuleana that we have as it relates to the canal and maintenance pieces there. In the presentation, can you clearly articulate where that delineation is, I would like to know. The reason is that I know for a fact that the State DLNR is utilizing HRS 46-11.5 and HRS 46-12. They are stating to the community that it is our...their interpretation is opposite of what our interpretation is and they are stating so, as they have for everything else that we have asked for as it relates to their *kuleana*. The lack of response that we have been getting over this past year, since the flood, is ridiculous at this point. This needs to be resolved, in my opinion. If our attorneys need to get a little more involved in it that is what my request is. I would like to understand how that is to be resolved. because for us to continue to say, "We are just going to dump more than five hundred thousand dollars (\$500,000) into this with the expectation of nothing," because we cannot see on the horizon of what that play is on. We have to fight it. inconsistency there is so big that when we have a flood and clearly the State has responded to Wailua River and other rivers in the past...it is just not right. My hope is that our State delegation is on our side and I am sure they are, and that we take it as far as we need to, to resolve it. That being said, the second question is about community outreach, because this finger pointing has gone on for much too long. The flooding, actually, has been going on for much too long. This is not a new occurrence. Those community members have been experiencing these things for years and so my only request is, what are we doing to educate, communicate, and engage the community in this discussion, because they need to be involved in it as well and I feel that is our responsibility.

Mr. Tabata: The best way to put it is we have had focus group meetings with members in the community with the Mayor in the Office of the Mayor, but we have not had a broader, wider community meeting.

Councilmember Chock: When I hear that personal damage to property was the next step for some of our community members that is an indication that they are at their tipping point.

Mr. Tabata:

Yes.

Councilmember Chock: I think that is what we need to look at, so thank you. The last question is really about the long-term considerations and remedies that you folks have somewhat outlined here. I am happy that we are getting professional engineers to look at this, but I do think it is a holistic issue meaning what we need to do is look everything up to the beginning until what is happening now and how it is we are managing the water. Over the years the silt has been an ongoing issue developing over time that we need to address. I have heard all sorts of different things, like, we are going to do this, but I do not know what is going to work, I am not an engineer.

Mr. Tabata: The items that we brought up are just addressing symptoms.

Councilmember Chock: My request would be to go farther than that if we are going to take care of this, let us get it done for the community. Thank you.

Council Chair Kaneshiro: Councilmember Kagawa.

Councilmember Kagawa: I communicated with Lyle yesterday as the Public Works & Veterans Services Committee Chair and told him about three (3) weeks ago that I saw the machine opening up the river mouth and it was there for two (2) days. I was quite happy when I saw that knowing that we are trying to make an effort to open up the river mouth, but I do not know how long the person was doing it, but when I saw the machine gone my thought was it looks like not much was done. I saw that he opened it, but it kind of looked like it would close up pretty quickly and to no one's surprise a couple days later, the mouth was closed again. I am wondering if we are spending half of this amount on the mouth opening, are we going to have

someone there to ensure that we maybe try and do a little more extensive opening rather than something that works for a day or two (2)?

Mr. Tabata: I am not an ocean/current professional.

Councilmember Kagawa: Yes.

Mr. Tabata: We also had a study performed on the coastal management and the study revealed...and we are going to bring all of these documents to the committee meeting that there are three (3) things that affect the river mouth and in February of this year, the State did a dredging. They said they spent eight hundred thousand dollars (\$800,000), removed fifteen thousand (15,000) cubic yards of material. They call it sand because it touches the ocean, but I say that it is silt from the Waimea Canyon and it continues to come for eons. This material gets deposited every day over six thousand (6,000) cubic yards a day, do not quote me. It is constantly flowing into the ocean...so the dredging that they did in February, I was told like in two (2) days it ended up being like they did not even scratch the surface and that was at the Waimea River Mouth. The ocean with the currents and surf pushed all the sand back. They took this sand, they extracted it, and they took it to the west-end of Kikiaola Small Boat Harbor to replenish the sand in front the Japanese and Chinese cemetery. Therefore, whatever was left behind in the sandbar out in front of the discharge of the river mouth, got pushed back by the current and the surf. During the time we took over this project in June and July, we had a King Tide and as fast as the excavator was removing sand, the surf was pushing the sand back and the excavator operator was just spinning his wheels over there. It was so ineffective. I was at the scene with them and it was totally frustrating. There are factors that happen, so I have found the best time to go and excavate at the lowest tide of the day. There are usually two (2) low tides; one (1) in the evening, at night, and one (1) during the day. It rotates with the moon. When we had the King Tide, we also had high surf because we had a southwest swell six (6) to eight (8) feet. Everyone was surfing at Pākalā, full of cars, down Pacific Missile Range Facility (PMRF). everyone was surfing on the westside. They were all happy. On that one day, king tide...as fast as we were removing the material, it was getting pushed back in. The guidance we have given is we have increased the standard in this recent procurement by specifying the size of machine and the depth and the width, which the State contract never did. The bids we got came in slightly higher than the State's, but we are trying our best to meet the needs of opening, because of how fast it refills back, because of the ocean pushing it back.

Councilmember Kagawa: I get that, but I am thinking if a person with a machine even if he is going four (4) hours a day, it is eight (8) hours of work with the machine and the next day, that forty thousand dollars (\$40,000) or whatever we paid him is all for nothing, because of Mother Nature and the tides, then I think we need to change strategy. Either attack it with every piece of equipment on Kaua'i and

just go for it rather than doing the same thing and it keeps plugging up. I would like to think that...Coach Tresler, if I am running the same play and it is getting stuffed for two-vard losses, I am pretty much going to pass or something, right? I work every day down there and when I saw what the person did, because there is a big pile of sand there. When I saw the job that he did and the machine gone, I thought to myself the part that he opened is not going to last long, and the next day I was not surprised that it was closed again. It is a large amount that has built...you call it neglect over years, it is a large amount of sand in order to open up that full river. In the past, I have heard about strategies where they anticipate a large rain and they do a lot of work there and they hope it blows out. I remember being young and both river mouths were opened by the County. I think it was Louis Rego that did it. I know it is possible to do it better than we are doing it now, but maybe because no one has done it for so long, it is going to be difficult to do, but I do not see half of six hundred twenty-five thousand dollars (\$625,000) as doing anything. I do not see the mouth being opened with that amount and it is just putting money into whoever gets the contract. Earthworks. Putting money into his account for one (1) day and that thing will be back the same the next day. I do not want to be "Mr. Negative" over here, but today is a pretty negative day. Thank you.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: Thank you so much Lyle for also working with me to understand what is happening there. I will just tell my colleagues and acknowledge with you that when the State let go of the responsibility, I responded to the request for help to the community. I was down there three (3) nights, five (5) days doing other things as well, but I watched what was happening. I went to the valves, went through the neighborhood with them, and I am just asking for a little bit of...is it consistent with your understanding when I am in the neighborhood there in the 'Ape Road area, that is where these drains are? Where the other end of the sixty (60) inch pipes go through, underneath that neighborhood. I put a stick down in there and it hit silt at maybe a foot below the top of the drain. Is that what your analysis shows?

Mr. Tabata: Yes.

Councilmember Cowden: Basically these pipes that run through the neighborhoods are filled and some of the 'auwai is actually quite full, too, so I am seeing a challenge from both sides. I did quite a lot of research and discussion...I do not live in the neighborhood, so it is a beginner's approach. In speaking with the State, because I talked to both our State Legislators, I do not think there is a sense that they have any intention of taking over this cost. They say it is the County's responsibility. People in the State building are saying the same thing. I was told forty-five (45) openings a day of the river per average in past years, does that sound correct? You said you spoke with Cushnie Construction Company Incorporated?

Mr. Tabata: It varies. The average is about forty (40) per year.

Councilmember Cowden: I am told about five thousand dollars (\$5,000) an effort of scooping it open. Is that close to what your understanding is?

Mr. Tabata: Yes, mobilization and doing the work.

Councilmember Cowden: And then sometimes it is required two (2) times a day.

Mr. Tabata: Yes.

Councilmember Cowden: What I have learned also from talking to hydrologists, geologists, and looking on Google Maps, there is essentially a ridgeline of sand dunes in the oceans, is that consistent with what you learned?

Mr. Tabata: I called it a sandbar, but, yes.

Councilmember Cowden: Sandbars. Okay, it reminds me of sand dunes. There is sandbars under the ocean. This problem is being pushed from both sides. We have the waves bringing it up putting sand there. I have never seen such a dynamic river mouth before. It looks like, it is essentially a delta. We have that coming from one-way. The science that I am hearing is that we have about one hundred (100) inches of rain per year less in the past twenty (20) years, is that accurate with your understanding also?

Mr. Tabata: We have not...

Councilmember Cowden: You do not know. Okay, well I looked at that because questions about, "How much of this is silt, how much of this is sand," my understanding depending on who I talk to, it is at least both. That sand is a very big part of it and silt is also a part of it. I spoke to retired Gay & Robinson people...do you know if anyone has dredged the river from the silt since Gay & Robinson was doing it?

Mr. Tabata: My understanding from talking to the same people in the community is that it has not been done in over twenty-five (25) years.

Councilmember Cowden: So, it used to be done and they would use that silt in the sugar fields. There was less wetland activity in this neighborhood in the past, because the sugar was using more of the water, is that correct? You worked in the industry...

Mr. Tabata: I worked at Kekaha and Līhu'e and I am not familiar with what...

Councilmember Cowden:

So you were on a different ditch system.

Mr. Tabata: at Gay & Robinson.

I am not familiar with what they were doing

Councilmember Cowden: If I understand correctly from $k\bar{u}puna$ how it worked, they had less coming in that area, so it sounds like this neighborhood is built in a wetland. Is that consistent with what you would observe?

Mr. Tabata: I believe so. We found an Environmental Impact Statement (EIS) that was completed by the Army Corps of Engineers in 1980, which has a deeper history and I cannot remember verbatim, but a lot of what you say is written in that document and we can share that document.

Councilmember Cowden: Okay. I am calling for a briefing coming up, too, and I am going to try to have a presentation from a range of different viewpoints.

Mr. Tabata: From all of those questions, we have been searching for every document that we can. To answer the earlier questions of responsibility and the State pushing it off on us, it is precedence setting that whatever Hawai'i Revised Statutes (HRS) came after, original documents, supersedes everything that we have.

Councilmember Cowden: Right. Okay.

Mr. Tabata: The documents that we have predate the 1986 HRS that I just spoke of. I have my attorney helping me and is leading me in this direction to say, "No." The legislators have told you that because they are listening to the State DLNR, who are telling them these things, but our understanding is... and we have gone through it, right? When we want to talk about County being able to make our own decisions, State HRS supersedes us.

Councilmember Cowden: I am trying to back you up and I did ask, I do not know if it has come yet, but I did ask for a legal analysis. It sounds like it has not come out yet.

Mr. Tabata:

I believe we are working on the same thing.

Councilmember Cowden:

Okay, so I did ask for that.

Mr. Tabata: I have been hunting for documents, calling Army Corps of Engineering for documents and agreements, and so forth that the State has thrown at me and everything predates 1986.

Councilmember Cowden:

Okay.

Mr. Tabata: My advice has been that the 1986 document supersedes everything prior that was in agreement, because many of them were when we were still a Territory.

Councilmember Cowden: Thank you, because I did not think to look for that 1986 document. I am trying to back you up and look at these things, but my concern is that the problem when we pay this is that the State is going to shove it back in our court. The County did do it for some time, because I spoke with County workers who have retired and they had done it. They told me what they did using a drag line and moving it down to Kekaha.

Mr. Tabata: And that was all prior to 1986 HRS and I believe in the early-'90s, the County Engineer at the time pushed it back to the State and brought this to their attention. Ever since then, the State has taken on those responsibilities.

Councilmember Cowden: I think no one wants this potentially five hundred thousand dollars (\$500,000) a year responsibility. Is the Army Corps of Engineers working for us to do this engineering study?

Mr. Tabata: We are requesting from the County for them to begin...as a local agency, we are requesting.

Councilmember Cowden: Is the Army Corps of Engineers working for the State, too, because I was told by the State that the Army Corps of Engineers is on it, so are they on it for you, for the County, or for the State?

Mr. Tabata: This is new news that I have heard about the State and we will have that confirmed.

Councilmember Cowden: And then when I did hear as a number is that to dredge the silt out of the river, like it has been done in the past, that would be estimated at about thirty million dollars (\$30,000,000), did you hear anything like that?

Mr. Tabata:

No.

Councilmember Cowden:

Okay, because I was like, "That is so huge."

Mr. Tabata: As I mentioned the firm that we have hired is working on the number for us.

Councilmember Cowden: Okay. Nothing like that. I do not mean just the little area, but to dredge it pretty far up. I have been hearing every suggestion from blowing open the opening of the river mouth...how about the levee? The last we were in here, we were being required to lift the levee to keep the people in that area from having to pay exorbitant flood insurance, do I remember correctly?

Mr. Tabata: We have been doing community meetings because of the new Federal Emergency Management Agency (FEMA) mapping. FEMA does the overall mapping and stewardship and the Army Corps of Engineering does the specific infrastructure of the asset need or help assistance for us.

Okav.

Councilmember Cowden:

Mr. Tabata: The Army Corps of Engineering is specifically helping us develop a project to raise the levee freeboard to meet the needs of the overall mapping that FEMA came up with. We need to keep those two (2) separated.

Councilmember Cowden: Has that levee ever been breached?

Mr. Tabata: As far as the reports I have seen, no.

Councilmember Cowden: And as far as the community I have spoken with, including very old, they say no, but that is a twenty-five million dollar (\$25,000,000) project that we are supposed to fund.

Mr. Tabata: Though the process is lengthy, the request is for the Army Corps of Engineers to fund via congressional legislation.

Councilmember Cowden: Okay.

Mr. Tabata: Depending on how much money is available can be responsible for anywhere from twenty-five percent (25%) up to fifty percent (50%).

Councilmember Cowden: I have two (2) last things, thank you folks for your patience on this. The Ke Ali'i drain, that area there is called, "Ke Ali'i" because there was an island in the middle of the river that King Kaumuali'i and other ali'i lived on. Is that correct with your understanding? Because I have gone over to the Historical Society and looked at two hundred (200) years of pictures and drawings and there was an island in the river and they lived there. The reason why I bring this up is being it is in alignment with what Council Vice Chair Kagawa is saying...it

is like, let us figure out something that is going to sustainably work and not just get kicked back and forth where we are basically reminds me of digging sand out with your children right on the shore's edge. To see it come up and then be back in a short period of time, because it looks like the design of that river is to have a river mouth closed and the best opening seems to be on the eastside. Over the years when it is open, it is just a little bit on the eastside, so we need to look at that. That was the second to the last question, the last one is duckbill. I looked up duckbill and saw how duckbills happen, because that is the suggestion, right? We are going to dredge out, we are going to make a clear area and then we are going to put a duckbill, which is like a big piece of rubber, so the water can only go out rather than go in, when the tide is high.

Mr. Tabata: Right.

Councilmember Cowden: So this is the first I understood that you would be putting it in a box, because when I looked at those sixty (60) inch pipe openings, it is all basically silted over almost to the top. I could not see how it would be any different with the...

Mr. Tabata: Like I mentioned, these are just interim means and addressing symptoms of the problem and the problem is the silting in the river.

Councilmember Cowden: So the old...

Mr. Tabata: If we continue not to dredge the river, the silting will still occur and no matter what we install...we are just taking our chances and tossing money at something that we are just guessing can help in the interim. It is better than nothing.

Councilmember Cowden: Okay, because the duckbill to me...I just do not see how it would work, but I am not trying to say that you do not know.

Mr. Tabata: Well I have used it in other operations in the past.

Councilmember Cowden: Has it worked?

Mr. Tabata: It has worked.

Councilmember Cowden: With the silted situation like that?

Mr. Tabata: Not necessarily with silt, but it just works in the situation that we are faced with right now.

Councilmember Cowden: Okay. I am going to accept that. In the briefing coming up, I am going to be trying to bring in a number of different perspectives, one of which is coming from the North Shore, I think about lifting houses. We were forced to do it. It is really hard to carry groceries up the stairs pregnant in a house—who wants a lifted house? If the houses in that neighborhood were lifted, would that help the problem at all? Can we lift the roads also?

Mr. Tabata: We have to go back to the levee, because FEMA made this decision and FEMA's decision on remapping happened in the mid-2000s when there was flooding on the Mississippi delta, in the Mississippi River, the Missouri River, all up there in the Northwest and they found that with the conditions that the Country was facing, that they increased the standard and that is why the freeboard had to be raised, right? We asked the Army Corps of Engineering to begin the process of addressing the need of the freeboard and they did a preliminary study that accounted for much of what you are talking about. We dug that study out after my meeting with you and their price for raising...and we can include all of this in-depth in the committee meeting—it will be a levee committee meeting...it is double the price you quoted me.

Councilmember Cowden:

Double sixty thousand dollars (\$60,000)?

Mr. Tabata:

It is over one hundred thousand dollars

(\$100,000).

Councilmember Cowden:

Per house?

Mr. Tabata:

Yes.

Councilmember Cowden:

And then the road...

Mr. Tabata:

We never even looked at the road. I do not

think that study looked at the road.

Councilmember Cowden: If we put twenty-five million dollars (\$25,000,000) into raising the levee and it does not even solve the problem...

Mr. Tabata:

Well it addresses the FEMA need.

Councilmember Cowden: It addresses the FEMA need, but it does not keep these people's houses from flooding. I went to their houses...

Mr. Tabata: This is extremely complicated and like I said everything we are talking about are symptoms of the problem and the problem is the river is silting. If we dredge that river like how people told me twenty-five (25) years

ago used to happen, regardless of how much water is coming down or how much less rain or more rain we have right now, it is the river and what is out there in the ocean that counts.

Councilmember Cowden: So we are fighting nature and I am just thinking how much it is going to cost to fight nature. I am just asking the question. My heart is with the people who are flooded...

Mr. Tabata: And I do not have the answers, because I am not the professional to deal with that kind of geological and ocean atmospheric issues.

Councilmember Cowden: I am making sure to have that at the briefing, the portion that is mine, so that we are looking at the facts and that we can create something that is sustainable especially if we have some big change like an economic change or a power supply change, anything like that. How do we make sure that we solve the problem rather than just keep it from constantly hemorrhaging? That is my goal. Maybe that is not achievable, but that is what I am hoping for. That we do not have to go out there and keep digging every other week. Thank you.

Council Chair Kaneshiro: With that, we are coming up on a caption break. Let us take our ten-minute break and we will come back with more questions from the members.

There being no objections, the Council recessed at 10:30 a.m.

The meeting reconvened at 10:41 a.m., and proceeded as follows:

Council Chair Kaneshiro: Welcome back. We have questions from Councilmember Evslin.

Councilmember Evslin: Thank you folks for coming here and I know we have beat this issue to death on first reading, so I do have some questions, which I will save for the committee meeting and maybe they will be answered in your more detailed presentation. Just one point that it feels like an egregious decision on behalf of the State for something that affects property and human lives to not only defund this, but in a way that it was communicated to the County at the last minute is just extremely disappointing. One specific question I had along those lines that I have is, is this something that is a trend Statewide? There is a number of beaches I know living on Oʻahu, Kailua Beach, Waimea Beach on Oʻahu that also get dredged regularly, so are they pulling out of wherever or is this specific to Waimea?

Mr. Tabata:

I cannot answer that, I am sorry.

Councilmember Evslin:

That is my only question for today. Thank

you.

Council Chair Kaneshiro:

Councilmember Kagawa.

Councilmember Kagawa: I think some of the reasons why the flooding is occurring to the residents is that these interior homes, I think is the function of the drains not properly working. Have we looked at our baseyard operations? I know they take care of the levee, can we expect more out of them? I know they used to work every Saturday and Sunday for a while...I do not know if it was catch up work on the levee in Hanapēpē and the Waimea River levees. Even on a daily, can we get them to do a little bit more rather than just focusing on dredging, what else can be done so that the Edrada family maybe can mitigate some of the things that are contributing to the flooding that she is getting regularly. Ken Morikawa is the husband of Representative Morikawa and I am sure she is...although she is part of the group who is saying no the State is not responsible, but whatever it is, husband and wife both live in Waimea, I would hope they would be inclined to try and help the Waimea residents as far as this flooding that is happening for a multitude of reasons. Can we ask our baseyard to do more? They have a lot of equipment and machines.

Mr. Tabata: We had to keep the levees certified. When I came on board in the end of 2010 and early 2011, the County Roads Division was already in the process of creating the levee crew. The Army Corps of Engineering specifically charged us with creating a levee crew and so they are a six-man crew, which we pulled from each of the baseyards to create to maintain the Hanapēpē and the Waimea levees and bring them up to specifications as directed by the Army Corps and we have done that. A lot of it had been landscaping work, exercising the gate valves at the two (2) levees. There is a pump station in Hanapēpē; exercise the pumps on a regular basis to make sure everything will be "run ready" when and if needed. For the specific drainage needs off of the levee in the town, that is done by another crew, Special Construction, and we have equipment. As you and I have discussed that part of it starts with being able to clear that five (5) gate valve, flapper valve station, so that we can get the water to flow and allow us to go in and clear all the mud and silt built up in the drains. Clearly, we have the means and methods to do that work. Part of it, too, if you look at the Ke Ali'i drain on the mauka side from where it is clear, you will see a whole bunch of vegetation and there is a species of Hawaiian duck that we have been told that have nested in there.

Mr. Tresler: Sorry, I am laughing because we tried to have it maintained, but we had to wait for the State representatives to monitor; it is a whole gambit of issues just to do our job.

Mr. Tabata: We waited for DLNR Fish & Wildlife to come with their monitoring tools to work with us, so that we can go in there. If not, we will be in violation of the Endangered Species Act.

Councilmember Kagawa: Sometimes I hear that we get negative comments from the public like, "How come I always see these four (4) men riding around and not doing nothing," and I do not know if it is County, but I am just hoping that when we know we have these types of problems where there are families that are getting flooded every time it rains, I am hoping that our crews are doing all they can each and every day to help solve the problems that we have. That is all I am saying.

Mr. Tabata: Thank you.

Council Chair Kaneshiro: Are there any further questions from the members? If not, thank you.

Mr. Tabata: Thank you.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify? Mr. Hart.

Mr. Hart: For the record, Bruce Hart. It is my understanding that a lot of Waimea Town is in a floodplain; it was historically. Therefore, what you are dealing with is as what Councilmember Cowden said you are dealing with Mother Nature. The water wants to go where it wants to go and it wants to do what it wants to do. As far as if you can get the Army Corps of Engineers to do and flip the cost and do some of the dredging that the plantation or the sugarcane worker...they used to do that and they did not have to get any permits, they just did it. They did not have to deal with Environmental Impact Statements (EIS) or any of those, they just did it. Those days are gone and that is why it is really expensive to dredge the river. That is one (1) of the benefits of those days when that was done and so you are really up against a big issue. I would like to mention, too, the legal issue of who is responsible. On occasion, as a citizen of this community, these kind of issues come up where there is these infighting between the State and the County and I do not know who is in the right and whose responsibility it is, but I would just like to say as a citizen that it is really frustrating to watch this, because it is expensive, it cost money for both parties, and that means it costs money for the people. I would just like to say, "Come on; we can get along and we can work this out without having to sue each other." Let us just work it out. Thank you.

Council Chair Kaneshiro: Is there anyone else in the audience wishing to testify? Seeing none.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the members? Councilmember Kagawa.

Councilmember Kagawa: I am going to be supporting this effort. I do have my doubts on how effective it will be with that amount and the same strategy as far as really keeping the mouth open. Certainly, it is going to be a lot more expensive in my guesstimate, if we try to be more aggressive and really opening it up better and allowing a lot of that silt and whatever to get out of the river. If the river has no movement, we cannot expect the rubbish to get out and if you look at Waimea, it is like a lake and not a river. Upstream mauka by the swinging bridge, you used to be able to jump off the swinging bridge and it was probably ten (10) to twelve (12) feet in the middle and now it is like a foot. You would break your legs if you jump off. A lot of things have changed. The State says the river mouths are not their problem, vet they control where the water flows and who gets water, if you will, agriculture. When it comes to taking care of the problem, then it is our job. Up to 1986, I guess we took care of it. I know for a fact because I was young and I used to be near those river mouths all the time. I remember Louis Rego's equipment dredging the river mouths and he did it so regularly that when it did close, it was not closed for very long. It was a regular once every two (2) months, maybe. That is how you keep a difficult problem by staying on top of it, but I think what has happened was that we have not done it for a long time, so now we cannot do it every two (2) months. We will probably have to do it every other day until we get it to a point where it manages itself. It is a very difficult problem. The drains are not working because of what I believe is neglect over the years and Mother Nature as well—sand has gone into the drain and into the town. You think how does sand and debris go uphill, well, it goes through many ways. Some will travel down from the road into the drain and some does push up from the tides. The drains are not functioning properly and that is a lot of the problem why you see flooding in the town. It is not coming from outside or the river, it is coming from beneath. Definitely this is a huge problem. It is disappointing for the State to say, "Maybe this session, we will put aside some; maybe." They collect four percent (4%) of General Excise Tax (GET) on everything, they collect income taxes; we are the second highest in the nation for taxes and our real property taxes in comparison to other municipalities are very low. That tells you our income taxes combined with the GET—that combination is lethal. The State has all the money, they have most of the tourist money, and they expect us to take another one of their responsibilities because they feel now that "we have too many jobs and we do not want to do this job." It is just disappointing. Like Bruce said, "We have to work things out," but if you cannot work it out, then you have to run against them and give the public an option. You can write articles like Gary Hooser, but that does not get anything done. You have to run against them and maybe a change in focus and effort can get important things done for your constituents rather than make excuses and blame other people. For me, that is what maybe I have to do. Whether I win or not no one will know, but in life and politics, you either have to do it or you have to be quiet. Thank you.

Council Chair Kaneshiro: Is there anyone else? Councilmember Cowden.

Councilmember Cowden: I did not mean to get our representative in trouble, I just meant I asked her and not saying it was necessarily her position, she was saying we were not going to get the State support. She felt pretty firm on that. I am glad that we are dealing with this. This is a really robust topic. I am definitely going to say "yes" today, but I want to be careful that we do not end up getting caught in the end by "if we pay now, we pay forever," so we would have to be looking at this deeply. I think that can be a big problem, I feel for the people in the neighborhood, and I am working hard to solve the situation for them in a way that can endure.

Council Chair Kaneshiro: Is there anyone else? Obviously it is a very complicated issue to resolve. As far as my concerns, if you can bring at the presentation all the issues on the table. I know we have issues with the drainage clearing near the houses and you briefly mentioned endangered animals. Also, the Army Corps of Engineers and the process and permitting, obviously we want to just go out there and resolve the situation immediately. Can you provide the amount of time it will take to get to a solution and then if there are any options to get to a solution quicker, if there is an emergency proclamation or something that will allow us to get the work done faster, once we know what the solutions are. Also, can you provide us a little information on whether the solution is to dredge, if that is going to also help with the levee height? Ultimately the question is what do we do to protect ourselves from a situation like this in the future where the State says, "We are just not going to do," because obviously we are going to step up to the plate because we want to protect the residents, their property values, and their homes. How do we protect ourselves from getting stuck in a situation like that? Whether it is our attorneys sending letters. We can keep track of our costs as much as we want, but if the State does not pay it then ultimately we will be footing the bill forever, so what are our options in that respect, too. If you can have that in the presentation. It is a very complicated issue on how to resolve. There are many facets to what you need to do to resolve the situation and I do not think there is a silver bullet to resolve everything. Councilmember Kagawa.

Councilmember Kagawa: I just wanted to clarify that I am not announcing that I am running for anything. I am just saying that complaining about it is not going to solve it. You have to go out and be the change and that is for the public out there that if you are frustrated, you have to try it. Once you get in office the other folks do not listen anymore, because they think they know it all. Thank you.

Council Chair Kaneshiro: My questions are more towards informing the public to let them know how difficult it is to actually come to a resolution. We can clear the river mouth as much as we want, but it is not the ultimate solution to this problem. They can say, "Clear the drainage so the water drains out better," but we have issues with that. It is giving everyone a clear picture of all the issues we are dealing with. Even if we do not have the solutions, it is just saying, "These are all the things that make it very difficult for us to get anywhere on it," and eventually we are going to have to check off the boxes and say, "This is how we are going to resolve the issues," Obviously, this is not a one-day solution. This will give everyone the grand picture of what we are really dealing with out here. Councilmember Cowden.

Councilmember Cowden: I just want to also support what has been said about looking at the trend line because when Councilmember Kagawa described jumping off the swinging bridge, Hanalei used to be really deep also and it is not deep any longer. It is three (3) to four (4) feet in places where it used to be twelve (12) or fifteen (15), so we might be having this problem in a lot of rivers. It is really important that we look at it.

Council Chair Kaneshiro:

Is there anyone else? If not, roll call vote.

The motion for passage of Proposed Draft Bill (No. 2760) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for November 20, 2019, and referred to the Committee of the Whole was then put, and carried by the following vote:

FOR PASSAGE:

AGAINST PASSAGE:

Chock, Cowden, Evslin,

Kagawa, Kuali'i, Kaneshiro TOTAL - 6, None TOTAL - 0, : Brun TOTAL - 1,

EXCUSED & NOT VOTING: Brun RECUSED & NOT VOTING: None

TOTAL - 0.

Ms. Fountain-Tanigawa:

Six (6) ayes and one (1) excused.

Council Chair Kaneshiro:

Next item, please.

Proposed Draft Bill (No. 2761) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 12, ARTICLE 2, KAUA'I COUNTY CODE 1987, AS AMENDED, BY ADDING A NEW SECTION 12-2.4, RELATING TO TINY HOUSES: Councilmember Kuali'i moved for passage of Proposed Draft Bill (No. 2761) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for November 20, 2019, and referred to the Public Works & Veterans Services Committee Meeting, seconded by Councilmember Cowden.

Council Chair Kaneshiro: I will suspend the rules. Councilmember Evslin and Councilmember Kuali'i, I believe you have a quick presentation on it.

There being no objections, the rules were suspended.

Councilmember Evslin: We have four (4) quick slides here to give an overview of what we are looking at. This is Proposed Draft Bill (No. 2761) and really all it does is defines what a tiny house is and creates a construction code specific to their needs. Just to be clear, there is nothing in our current building or zoning code that prohibits smaller homes, but in practice the construction is difficult because of minimum ceiling requirements and loft requirements.

Councilmember Kualii: On the next slide we have a few bullets of what the Bill does and what it does not do. Number one, it incorporates Appendix Q from the 2018 International Residential Code (IRC) into Chapter 12 of the Kauaii County Code. Bullet number two, it changes the maximum square footage of a tiny house as defined in Appendix Q from four hundred (400) square feet to five hundred (500) square feet, not including lofts. Bullet number three, it adopts all of the 2018 IRC references within Appendix Q into Chapter 12 of the Kauaii County Code. What it does not do is it does not make any changes to zoning. A tiny house would need to be permitted as either the main dwelling, an ADU, an ARU, or a guest house. It also does not bypass any of the wastewater requirements, so all tiny houses will still need to comply with applicable State laws regarding wastewater.

Councilmember Evslin: Just one (1) quick note to add on top of what Councilmember Kuali'i said was that if you read the draft bill, included in there is the reference to Appendix Q and then all of the references within Appendix Q written out. It can be a little bit confusing when you are looking at the proposed draft bill, you really have to reference Appendix Q separately to get an idea of what it does. Appendix Q was incorporated as an appendix into the 2018 IRC in 2016 and appendices are optional provisions within the code that municipalities can choose to adopt or not adopt. It was designed according to the person who wrote it as sort of the ability to standalone without the 2018 IRC, so they are really trying to encourage municipalities to adopt this with or without the full 2018 residential code. It is rapidly being adopted elsewhere. IRC is the main building code that we use in Hawai'i for one and two family dwellings and the 2018 IRC is currently under review by the Hawai'i State Building Code Council.

Councilmember Kuali'i: What Appendix Q does and does not do...the first bullet, it addresses most of the issues currently facing tiny houses and would provide a national code to which all tiny houses would be built. Bullet two, it legalizes sleeping lofts; lowers the minimum ceiling height to accommodate lofts; add emergency egress and rescue requirements specifically for sleeping lofts; allows for

stairs and ladders designed for small spaces. What Appendix Q does not do is it does not apply to movable units such as trailers or recreational vehicles (RVs).

Councilmember Evslin: The main rationale for this proposed draft bill is because tiny homes can be built really cheaply and our General Plan says we need nine thousand (9,000) new homes, so we need to try and make it as easy as possible to build all types of homes. Tiny homes have been used as homeless shelters elsewhere. I think the main incentive for us in introducing this now is because we just passed the guest house bill, which allows kitchens in guest houses. Therefore, we really have within our zoning code a type of building, which is meant to be under five hundred (500) square feet and rather than waiting for the 2018 IRC to work through its process, and sometimes building codes here can take three (3) years to pass, it seemed like it made sense to try and pass this now to try and incentivize the construction of guest homes and smaller footprint homes. Also a recent change, we just increased lot size coverage from fifty percent (50%) to sixty percent (60%), so in theory, there is a lot of homes on Kaua'i that maybe did not have the space to add anything and now they have a small amount of space on their existing lot that they could add something. That is why we are introducing this now for discussion.

Council Chair Kaneshiro: Thank you. Are there any questions? Did anything prevent us from doing a tiny home prior to this Bill?

Councilmember Evslin: Maybe we can get Lyle up later, but really you could do a five hundred (500) square foot or four hundred (400) square foot home; there is minimum bedroom requirements which are restrictive, which this does not touch. The main things that these are addressing is the ability to do a loft. A loft in a small place is really hard to do. This is a loft, access to the loft, egress from the loft, and height requirements in the loft itself. Even though building sizes is still somewhat restrictive in the minimum building size, it seemed like it made more sense to adopt Appendix Q exactly as it has been adopted, nationally if we are going to adopt it, and then maybe later...

Council Chair Kaneshiro: As far as the loft goes, when I think of a tiny home, I am thinking someone has an open lot and they are putting down a tiny home, like you see on television or in magazines, but you are talking about a loft in an existing house?

Councilmember Evslin: A loft within a tiny home. If you are building a five hundred (500) square foot home, it is really difficult to build a small loft especially if it does not have high ceilings. Therefore, this just makes that easier and the access to the loft with the current building code would be really small to do in a small space, so this allows for ladders and things.

Council Chair Kaneshiro: So not having the ability to do a loft is what is preventing people from being able to do a tiny house?

Councilmember Evslin: One (1) prevention. People can still do it, they just cannot do the loft.

Council Chair Kaneshiro: Okay. Are there any other questions? Councilmember Chock.

Councilmember Chock: I know you mentioned that it does not make any changes to zoning, but I wanted to know if there is any foreseeable zoning changes that are being considered as it relates to trying to incentivize this. We already have some on the books, but is there anything else? If you do not have an answer now, we can wait. I want to see the full spectrum of what you envision.

KA'ĀINA S. HULL, Planning Director: Aloha. Chair and Ka'āina Hull on behalf of the Planning Department. Councilmember Chock, concerning your question, just for clarification, the question is from a zoning perspective, would we be looking at making any further changes in conjunction with the tiny house bill? No, we will not be. Quite honestly from a zoning perspective, if you go back six (6), seven (7), maybe even eight (8) years ago, the zoning mechanism or the zoning ordinance was one of the chief barriers to further intensifying the density in various areas of the island, the urban areas, because there was not enough density in those areas. With things like the ADU Bill, the ARU Bill, the Guesthouse Bill, as well as farm-based code in some of our town cores as well as R-40 on Rice Street, for the most part density is no longer an issue in our urban areas. There may be a handful of properties in a case-by-case situations that may want to look at it going beyond the density they have, but density for the most part now is not a barrier to entry for construction of additional units. The primary issues are things like infrastructure, water, wastewater, and then the building code, which this Bill is attempting to address. There is certain aspects of the building code that are preventing individuals from being able to declare sleeping of habitable spaces and this just frees it up.

Councilmember Chock: Thank you.

Council Chair Kaneshiro: Councilmember Kagawa and then Councilmember Cowden.

Councilmember Kagawa: I do not know if I got a clear answer of what Council Chair Kaneshiro had asked, but does this change anything right now? Are we just defining it? Is that what is happening?

Mr. Hull: Yes, from a zoning perspective, I think a lot of people are saying, "Well we have ADUs, we have ARUs, we have guesthouses, and

now we are adding tiny homes," and that is not it at all. It is just that you can build a tiny home as your main dwelling. You can come in right now, you have the ability to construct a single-family dwelling. You want to propose a three hundred (300) square foot single-family dwelling, the Planning Department is not going to have an issue with it. We will sign off as long as you have the right to build a single-family dwelling unit. What some people are running in to is when they are constructing those smaller units, three hundred (300), four hundred (400), and five hundred (500) square feet, they are trying to (inaudible) through the building permit process...say a loft and a loft that they are going to sleep in. Under the Building Code right now, your ceiling has to be so high in order for you to declare a sleeping area. (Inaudible) declare it as storage or they will not construct it, right? I think what the Bill is attempting to do is say that these can be habitable spaces and the International Building Code at least recognizes that and to fold that into our permitting process, so it does not add a new density. It is just saying you can have a loft or a certain ceiling height in your home if it is under five hundred (500) square feet. There are other issues that Councilmember Evslin pointed out...say like the bedroom and whatnot, but I do not think that is for a different time for another battle.

Councilmember Evslin: I think a lot of lofts, in theory, are being built after the fact. People build a tiny home or a smaller home, then they add the loft on and probably without adequate egress on it. This is ensuring that if someone does do a loft, that they are doing it safely with the egress requirements in there. It is ladders, loft, egress, and ceiling.

Councilmember Kagawa: I had one (1) complaint earlier about the new Molokoa—someone put in a tiny home and the newer part of Molokoa, they are all new houses. They were complaining about this person who put a tiny house there and they questioned whether or not they had a permit. Is there a plan from the Planning Department side to say these areas should not have tiny homes? When you have one hundred (100) houses and then you have one lot with a tiny home, I think the other ninety-nine (99)...but if you have ten (10) tiny homes and one hundred (100) houses, then okay, maybe that is the trend. Is there a way for the Planning Department to guide so that if you send five hundred thousand dollars (\$500,000) to not to live next to a tiny house? Is there anything from the Planning Department just to provide a baseline? Pikake protects it with covenants. Other places do not have covenants, but like I said, they paid seven hundred thousand dollars (\$700,000) and one (1) house out of one hundred (100) build a tiny home, you feel for the ninety-nine (99) others. They spent their lifesavings and now they have to live next to a tiny home. Is there any plan going forward? What I want is fairness and clarity for people. When you spend your lifesavings, you protect it with some fairness with the money you spent. I do not want every place to look like Līhu'e or Hanamā'ulu, do you know what I mean?

Mr. Hull: The Department does not have any plans in the near future for that and because when you are talking about fairness, I think a lot of what comes into the issues is individuals that spend say their lifesavings to buy a house in Molokoa and they expect a certain form and character of that area, right? Where the Planning Department would have some equity issues is to say, "Indeed we hear your concerns; this individual that bought the lot next to you, plucked down a two hundred (200) square foot house," but the same right for that individual to build a two hundred (200) square foot house...all the other property owners also enjoy to be able to do that for their in-laws or for their children coming home, right? That was one (1) of the primary thrust of why the ARU Bill was passed—to say, "You have your property, you have your two thousand (2,000) square foot house, you want to build a small, little rental unit for the kids coming home from college or your in-laws to age-in-place with you on the property, you can build that small unit on your property." While it would function the same form and character being that it has that two hundred (200) square foot house is the rest of the neighborhood, it is a little hard pressing for the department to say, "You can only build that smaller unit after you built the larger unit."

Councilmember Kagawa: To be clear, this tiny home that I was being complained about was about one hundred (100) square feet, so it was a teeny, tiny type. Like I said, I do not know if it had a permit or not. I think it got moved, so maybe it did not have a permit, but it was in front of a big beautiful house. I guess it was to get some extra income or something. I hoping that we can work towards transparency to give the community's a say, like the community association can say, "We object to having anything less than three hundred (300) square feet," and they can decide what that amount would be. That way it will provide a little courtesy. If ninety-nine percent (99%) do not agree, I would side with the ninety-nine percent (99%). That is why we are here. We are here to try to make things fair for the people.

Mr. Hull: Yes, and I also agree with the statement that you made Councilmember Kagawa. Through the covenant process that is much of the way that type of form and character is dictated through covenants of the association. When you buy into a particular property, the association has a set of rules which you can and cannot construction certain types of smaller dwellings; Pikake is definitely one of them. You are entering into an association when you buy that property knowing full well that these types of structures are not permissible and if someone does attempt to construct, there are strong civil standing for the association to have the structure removed.

Council Chair Kaneshiro:

Councilmember Cowden.

Councilmember Cowden: IRC means International Residential Code, Appendix Q is something even beyond the national...under tiny house, it says, "Unenclosed attached structure such as carports, breezeways, lanais, or porches shall be excluded" from that five hundred (500) square feet maximum—does that apply to all ARUs?

Mr. Hull: I believe that language was taken directly from the additional rental unit definition.

Councilmember Cowden: While I do not have a problem with that, when I look at a lot of times you can have a small house and a pretty extensive screened in porch area, a lot of people actually live in their screened in porches...the potential is able to be quite a bit bigger than a tiny home, if all the rest of that is part of it, correct?

Mr. Hull: Yes, but if you have a concern for that, that is just more of a concern with the way the ARU and guesthouse is defined. From a Planning perspective and a construction perspective, we have building codes that are basically mandating reconstructed houses that conform to New England's standards of very cold winter and the fact that we do not take advantage of the climates we have here to have places like *lanai* living rooms, *lanai* television rooms, and what have you. It is unfortunate, but we have gotten stuck in the mold of thinking we have to construct a home in a manner that was set up for the east coast of America to protect against, among other things, very frigid winters.

Councilmember Cowden: I was just making sure I was clear on what that is. I do not have a problem with it, I am just being clear. Five hundred (500) is in that "east coast" ready for winter building. Another thought, egress, because I think of that as where you come in on the road. What is egress in a house? What does that mean?

Councilmember Evslin: It is like an emergency escape, like egress windows in a bedroom would be the ability to get out of there.

Councilmember Cowden: Oh, okay.

Councilmember Evslin: If I can respond two (2) things real quickly. Just on the definition. Yes, we wanted to make that definition for square footage consistent with how we are looking at ARUs. Part of the definition we were talking about for guesthouses, but we could not change it because it would have to go back to the Planning Commission. The only other change we made to Appendix Q was changing it from four hundred (400) square feet to five hundred (500) square feet. Around the rest of the country, it is four hundred (400), but we thought it makes more sense to be five hundred (500), so that it aligns perfectly with our existing guest home policy. Just one (1) quick note you mentioned IRC being an international code, it is an America code. It is from St. Louis, Missouri or something. It is the code that is adopted in almost every state in the country.

Councilmember Cowden: So they call it international just cause, but it is national? Should it be "national"?

Councilmember Evslin: Maybe there are places around the world that adopted it also, but it is (inaudible) that is developed and used in America.

Councilmember Cowden: Okay.

Mr. Hull: I will also add for clarification, counting the (inaudible) areas is a direct definition from the additional rental unit. The guesthouse does not have it, the definition is still open-ended. Staff is currently working on it, Britni Ludington-Braun of our staff is working on administrative rule changes that should go into effect in the next couple of months, so that the guesthouse aligns as well with that definition.

Councilmember Cowden: Thank you. The less confusion we have the better.

Council Chair Kaneshiro: Are there further questions from the members? If not, thank you, Mr. Hull. We will take public testimony. Is there anyone in the audience wishing to testify? Mr. Hart.

Mr. Hart: For the record, Bruce Hart. It looks like I am the only one getting up and speaking from the public. I did not expect to, but I would like to say a few words on what Vice Chair was commenting on. If it is an association there are a lot of rules, like parking in a cul-de-sac. You cannot do it in the association with new construction, so they do not have that problem. It is almost like an echo, I spoke two (2) years ago on, "You are going to increase density," and you are going to have a problem. People are going to be upset that their view plains, that if they look out this picture winder and now they see a tiny house. When you increase density, what you do is, you take people who purchased in a neighborhood thinking they would live there their entire lives, they would raise their children there, and that the neighborhood would remain basically the same as what they bought in to. When you increase density, you change it. You do not change it from their perspective, most of the ones that bought in originally, it is not for the better. You also increase noise and you increase parking problems. When you add to that the problem of that is you have multiple families living in single-family residential homes. That single-family, as another testifier said back then, when you allow that, it just goes on and on. You then compound the parking and the noise problem and you upset the people who bought there originally. They do not have the same neighborhood that they had before. As far as what the Councilmembers have introduced here, I think it is just more of the same package that you have been introducing and it is facilitating micro-homes, that is what I call them. For those people who are interested, there are hundreds of them in books at the Kapa'a Library, all the plans, everything is there. Thank you.

Council Chair Kaneshiro: Thank you. Is there anyone else in the audience wishing to testify?

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the members? Councilmember Cowden.

Councilmember Cowden: I want to acknowledge Bruce Hart's concerns. Absolutely, all of these packages, the tiny homes, every one of them, adds to the density. There are people who really do have a serious challenge with that and there are rightful concerns with noise, view plains, parking problems when we get deeper onto our ARU suite, I will be speaking about some of my concerns, particular parking. You are absolutely right, Mr. Hart. The challenges that we have this access of seven billion (7,000,000,000) people on the planet now and there is not enough room for people and we have a lot of houselessness on this island, particularly as more and more properties are being used as financial instruments, being allowed to sit vacant most of the year. We have quite a lot of vacant properties. I believe I have seen the statistics that we have as many vacant properties as we have houseless...like if everyone moved in to somewhere, we would not have a problem. That is not the situation that we do have. Yes, it is a problem. Yes, it creates stress in a sense of crowding and we need to have a place for our children to be here. We are out of a workforce, almost, when we are looking at fifty percent (50%) over sixty-five (65). Where do we put our people that can be doing all of the work? Where do we put our people that are raising the next generation? We need to have places. That is where overall I do support having these additional houses, and yes, it does exacerbate the sense of crowding.

Council Chair Kaneshiro: I just want to clarify that this Bill is not adding density. Whether someone wants to build a big house or a small house, that is the option we are providing. It is not saying, "You can build two (2) tiny houses in lieu of one (1) big house." It is, "You have density for one (1) home, all we are doing is providing the opportunity to build a big home or a small home," and again, it is based on what that person can afford, what they want to live in, it is all up to how that person wants to build. I just want to make it clear, it is not adding density to that lot or any property. Councilmember Cowden.

Councilmember Cowden: I want to thank you for adding that clarification. Is someone wants a small house on their entire property that is up to them. I guess I was blurring in additional rental units with tiny houses and

guesthouses. The big differential is a tiny house can stand on its own, it is not sitting as an extra house. Thank you for that clarification.

Council Chair Kaneshiro: Councilmember Eyslin.

Councilmember Evslin: I appreciate the Council for entertaining this discussion and hopefully moving it forward to committee. I know we all recognize that we are in the worst housing crisis that we have ever seen and it just have deep, deep repercussions throughout our entire society. I feel like my generation is getting priced out, countless friends have moved away and will probably never come back, increasing homelessness, teachers living out of their cars because they cannot afford a house on a teacher's salary, and on and on. I do not want to oversell this as the solution, because this is relatively small. I think most people who want to try and build a small house will probably do it anyway and just not put a loft in or put it in after-the-fact. This is just a little nick in the problem, but my hope here is that we can nick this problem from every possible angle to just try and make it easier for people to have more options when they are trying to build a home for their parents, kids, or a renter.

Council Chair Kaneshiro: Councilmember Kagawa and then Councilmember Kuali'i.

Councilmember Kagawa: In anticipation of some of the public hearing bills and we are trying to give the public a lot of options. We are talking about tiny homes and defining it. We are trying to fix our housing problem. I warn that we need to be careful. We need to be calculated because when I look at a lot of these testimonies coming in favor of the new proposals coming up, they are coming from the Rice Street owners of businesses. They are talking in relation with the Transportation Investment Generating Economic Recovery (TIGER) Grant, which we are doing right now. I have been strongly opposed to the reconfiguration of Rice Street. Twelve (12) years ago, we opened up more lanes to accommodate traffic flow. Twelve (12) years later, shutting down lanes. It is going to be a mess and I want to communicate to the Rice Street owners who support it, that I believe it is going to be a mess. It is not done yet, but wait until it is completed and watch that traffic, and you tell me whether we made a good move. Yes, it is going to be better for biking. safer for walking, and now thinking we are going to get more housing there, but twelve (12) years ago, we did it to accommodate larger population on the traffic. We opened it up and now we are going to close it. Let us really take our time when throw out things, because when it backfires, it is worst. We will not be able to open up those lanes anymore. That TIGER Grant is a done-deal. Those lanes are not coming back. All the people who are in favor of all the new things... I hope it works out, I really do. I hope it allows for more housing around the hub of Līhu'e, I really hope so, but I am entitled to my opinion and I doubt it.

Councilmember Kuali'i. Council Chair Kaneshiro:

I just want to echo the comments of Councilmember Kuali'i: Councilmember Evslin and say, yes, the need for our affordable housing is so great that we need to have as many options as possible. One of the reasons that I am supporting the five hundred (500) square feet is because I know of the tiny home module in Anahola that is four hundred eighty (480) square feet and it is basically three (3) eight by twenty (8x20) containers modules that make that up. It is up as a module now by Homestead Housing Authority with the Anahola Hawaiian Homes Association right there in the marketplace, so if you drive north as you head into Anahola, the first thing you will see on the left is the marketplace and you will see the tiny home. It has a woodgrain finish and you are welcome to stop by and see it. It is really quite sizable. It is a one-bedroom unit and if they were able to do lofts, that would even add more sleep areas, I think it is a really nice option that a lot of people will probably like, so feel free to stop by and see that, if you like.

Council Chair Kaneshiro: Is there anyone else? Roll call vote.

The motion for passage of Proposed Draft Bill (No. 2760) on first reading, that ordered to print, that a public hearing thereon be scheduled for November 20, 2019, and referred to the Committee of the Whole was then put, and carried by the following vote:

Chock, Cowden, Evslin. FOR PASSAGE:

Kagawa, Kuali'i, Kaneshiro TOTAL - 6, TOTAL - 0, None EXCUSED & NOT VOTING: Brun TOTAL - 1, TOTAL - 0.

RECUSED & NOT VOTING: None

AGAINST PASSAGE:

Six (6) aves and one (1) excused.

Council Chair Kaneshiro:

Ms. Fountain-Tanigawa:

Next item, please.

BILLS FOR SECOND READING:

Bill No. 2757. Draft 2 – A BILL FOR AN ORDINANCE AMENDING ZONING MAPS AND DESIGNATIONS IN THE SOUTH KAUA'I COMMUNITY PLAN (County of Kaua'i Planning Department, Applicant): Councilmember Kuali'i moved to approve Bill No. 2757, Draft 2, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Cowden.

Council Chair Kaneshiro: Are there any questions from the members on this? Councilmember Cowden.

Councilmember Cowden: Is there a change from our last discussion?

Council Chair Kaneshiro: No. Is there anyone in the audience wishing to testify on this?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Seeing none. Any final discussion from the members? Councilmember Evslin.

I agree one hundred ten percent (110%) with Councilmember Evslin: what this Bill is doing. I think form-based code is a fantastic option for our communities, but it really relies on much more flexibility over use, so that we can make sure that we are having things such as small grocery stores within our town cores with a minimum amount of red tape around their construction. I think formbased code can do this and I appreciate Planning going back and making sure that the code was flexible enough to allow more use. My single concern which I mentioned at committee was the hotels. The reason I introduced an amendment to remove it was simply based on the idea echoed in our General Plan and the Tourism Strategic Plan that we are over capacity for tourism, but I want to say that I am not all that concerned about allowing a hotel in a form-based code area with a use permit, as our Planning Director said at committee. That the process to actually permit one of these. that the biggest they could be with form-based code is probably like eight (8) or ten (10) rooms. It still have to get a use permit, which is discretionary and for the most part the community could shut that down during this process. You are not going to get a resort in Kalāheo Town or anything like that. I personally would prefer not to allow that in there, but the fact that it is in there, I am not that concern, and I still really support the Bill as a whole. I also just want to again praise Planning for two (2) things. One (1) is for coming to us with these changes to recognize that the first draft of the South Kaua'i Community Plan had limiting factors, which were unintentional and they came to us basically saying, "This was a mistake and we need to change this," so that is flexibility. Along with the flexibility of going back out to the Koloa community on the Koloa side of it. I think sometimes you see private or public organizations just hammer in on, "This is what we want to do," but Planning basically preemptively said, "No, we want to go and talk to these people," and they came back to us and said, "We did not have a meeting vet and we want to make sure that we run this extensively by the community first," which is totally the way to operate. I really appreciate that and I support this.

Council Chair Kaneshiro: Councilmember Cowden.

to largely Councilmember Cowden: Ι am going echo Councilmember Cowden said and I see form-based code as almost like a generational change and how we are looking at things and really appreciate the flexibility of it and the trend towards going back to living like a community that can walk. I think in the end, it will help alleviate what we have as traffic concerns and that we will be building a more resilient community because we are making these shifts. I know it is a little bit difficult for particularly people who have been contractors or builders for their entire life. I have been hearing complaints in that just relative to being uncomfortable with the shift, but I like the direction and I appreciate that it is going back to Koloa for them to have a little bit more feedback. I even spoke to some of those people from Kalāheo who had some concerns and explained a little bit more deeply to them. It would not hurt to go there, but they actually felt rest assured over the discussion that we had for those specific individuals who had communicated. I will certainly support this.

Council Chair Kaneshiro: Is there anyone else? I just want to say that I will be in support of it. This was just to correct an oversight in the Kalāheo area regarding our mapping that came with the South Kaua'i Plan. Kōloa has been taken out and will be up for further discussion as Planning goes and meets with the community to be sure on what they want as far as form-based code and Kōloa. I think we are good to go on this. Is there any further comments of questions? If not, roll call vote.

The motion to approve Bill No. 2757, Draft 2, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR APPROVAL: Chock, Cowden, Evslin, Kagawa, Kuali'i, Kaneshiro TOTAL-6, AGAINST APPROVAL: None TOTAL-0, EXCUSED & NOT VOTING: Brun TOTAL-1,

RECUSED & NOT VOTING: Brui RECUSED & NOT VOTING: None TOTAL – 0.

(Councilmember Chock was noticed as not present.)

Ms. Fountain-Tanigawa: Six (6) ayes and one (1) excused. The next Bill is regarding the bus. Did you want to push that to the end of the agenda?

Council Chair Kaneshiro: Yes, we are actually going to move it to after the public hearing at 1:30 p.m. Does anyone in the public want to testify on the County Bus and Paratransit Code of Conduct regarding fees? If not, we will push it to after the public hearing at 1:30 p.m.

Ms. Fountain-Tanigawa: The next items are Executive Sessions.

There being no objections, ES-1008 was taken out of order.

EXECUTIVE SESSION:

ES-1008 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing, discussion, and consultation regarding the Quarterly Report on Pending and Denied Claims. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-1009 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Section 3.07(E) of the Kaua'i County Charter, the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing on Special Counsel's continued services to represent the County of Kaua'i in general civil litigation matters. The representation will include cases in Federal Court, the State Courts, administrative contested cases, agency hearings, and arbitrations. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

(Councilmember Chock was noticed as present.)

Councilmember Kuali'i moved to convene into Executive Session for ES-1008, and ES-1009, seconded by Councilmember Chock.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on our Executive Session?

There being no objections, the rules were suspended to take public testimony. There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Seeing none.

The motion to convene into Executive Session for ES-1008 and ES-1009 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION: Chock, Cowden, Evslin, Kagawa, Kuali'i, Kaneshiro TOTAL -6, AGAINST EXECUTIVE SESSION: None TOTAL -0, EXCUSED & NOT VOTING: Brun TOTAL -1, RECUSED & NOT VOTING: None TOTAL -0.

Council Chair Kaneshiro: Motion carried. We will be going into Executive Session. We have public hearing at 1:30 p.m., so at 1:30 p.m., we will be back, we will take public hearing, we will take our transportation item, and we will finalized our Executive Session item also.

There being no objections, the Council recessed at 11:41 a.m. to convene in Executive Session.

The Council reconvened at 1:43 p.m., and proceeded as follows.

Mr. Sato:

We are back and on the bottom of Page 2.

C 2019-234 Communication (10/11/2019) from the County Attorney, requesting Council approval to expend additional funds up to \$100,000.00 for Special Counsel's continued services to represent the County of Kaua'i in general civil litigation matters. The representation will include cases in Federal Court, the State Courts, administrative contested cases, agency hearings, and arbitrations: Councilmember Kuali'i moved to approve C 2019-234 for the record, seconded by Councilmember Chock.

Council Chair Kaneshiro: Is there anyone in the audience wishing to testify on this item?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Seeing none. Is there any discussion from the members?

The motion to approve C 2019-234 for the record was then put, and carried by a vote of 6:0:1 (Councilmember Kagawa was excused).

Council Chair Kaneshiro:

Clerk, our final item on Page 5.

Mr. Sato:

The final item is on Page 5.

Bill No. 2758 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 17A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO COUNTY BUS FARES, AND ADDING A NEW CHAPTER, RELATING TO COUNTY BUS AND PARATRANSIT CODE OF CONDUCT: Councilmember Kuali'i moved to approve Bill No. 2758, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Chock.

Council Chair Kaneshiro: Does anyone have any questions for the Administration? Councilmember Cowden, do you have questions?

Councilmember Cowden: Yes. I want to thank you for all of the great work that you did, and you did a really good job in responding to the questions that were sent to you. You may have received them late, but I sent you a list of comments from the foster care grandparents and the Kaua'i Veterans Council.

There being no objections, the rules were suspended.

CELIA M. MAHIKOA, Executive on Transportation: Celia Mahikoa, Executive on Transportation. Yes, we did. We received it and will be needing time to review.

Councilmember Cowden: I wanted to ensure that you received it.

Ms. Mahikoa: Thank you.

Councilmember Cowden: My main concern was to ensure that you received it. I will ask one (1) of the questions. I have learned things that I have not grasp prior about the scheduling for paratransit. I know that you folks are working to optimize. Some of the comments made were that three (3) of them are all of the same neighborhood that get picked up from three (3) separate busses to go to the same place. Is that common and are we working on our scheduling to ensure that does not happen?

LEONARD PETERS, Paratransit Manager: Yes. We are working on efficiency when it comes to scheduling. What dictates the scheduling all is the request times by the customers. If those request times are far apart, the bus will pick up customers and the different time points. We need to honor the requested times.

Councilmember Cowden: In their examples, they are all from the same neighborhood, the same housing development, and going together to the same meeting. Being that they requested the pickup separately, they were assigned separately, but they would have preferred to ride on the same bus. Apparently, there is a number of people from Līhu'e Gardens that are foster care grandparents. They seem to feel that this happens more often than it should. Is that a scheduling element?

Mr. Peters: Yes.

Councilmember Cowden: A piece that they had brought up in which I have not contemplated, and I am wondering why it happens. When we have eight thousand seven hundred (8,700) rides, it is not surprising there are difficulties. However, hearing stories of people who are being picked up at 5:30 a.m. or 6:00 a.m. in the morning for a 9:30 a.m. event, and being left in the dark and in the rain. What creates this problem, being in unsheltered areas, and how do we avoid that?

Apparently, this happens frequently being that a number of them all gave input on this part of the conversation. What can we do to address this and why does that happen?

I feel some of that happens by nature with the Ms. Mahikoa: rural environment in which we operate in is going to provide and provides daily challenges. Some of the challenges include the facilities that are available, to protect our passengers when they are needing to wait before or after a ride, or getting to and from the bus stops and/or to the locations that they are needing to get to. This is partially the reasoning. Each situation differs from another. There are so many elements that influence a trip and the way it is setup. There are certain aspects regarding an individual's accessibility to transit that will drive certain elements of the reservation; as will the availability of a ride that is in aligned with the time of when they are needing it. We need to provide a reasonable window around that to be operationally responsible that we attempt to conduct this service to the public. Occasionally, there will be situations that occur in which are not ideal. We do our best to address the issues. We like to encourage every rider who have negative experiences with The Kaua'i Bus, to please contact us and let us know. immediately... I have these gentlemen who handles a good portion of this research of what happens when these situations occur. If we do have the knowledge of this happening or if we are promptly notified, we are able to be much more effective in addressing the contributing factors. We are able to do a lot. However, there are some things that we are not able to change with the conditions of the way we operate.

Councilmember Cowden:

JEREMY K. LEE, Assistant Executive on Transportation: For the record, Kalawaia Lee, The Kaua'i Bus. Part of the core in which why we are here today and discussing this ordinance is to help and bring in some of the constraining factors of our Paratransit System to truly serve the people whom really need it. A large portion of the work done by Leonard in the paratransit section is to get us to a place where we have a sustainable operation that is able to serve the customers' needs in the ways that we need too.

Okay.

Councilmember Cowden: In speaking to them and when you are talking about the ability pair down the people that do not need paratransit and are able to use the mainline merely by age, there will be quite a bit more availability. Is that what you are saying and is that correct?

Mr. Lee: The estimated effect is that we are able to have more resources available for the people that actually need Americans with Disabilities Act (ADA) Paratransit service. That is at the core of the one (1) of the main tenants in which we are trying to accomplish today.

Councilmember Cowden: Is there any planned public events where we are likely to hit the elder population? In talking about this issue, I found that when

I was talking to both the Kaua'i Veterans and the foster parents, when they explained the increase in our retirement age demographic, most people were completely unaware of that. I shared the number that you gave us last week regarding eight thousand seven hundred (8,700) riders per monthly average. It was really surprising to everyone, including myself. People felt reasonable in the needs of having containment on this. I am trying to think of an event where it is mostly senior citizens. Perhaps being able to piggyback on some of the events that happen with the senior population and that you are able to have this discussion with them.

Mr. Peters: I am sorry, I did not introduce myself the first time. Leonard Peters, The Kauaʻi Bus. We just completed visiting every senior center throughout the island. Next month, we will be visiting the senior centers again beginning with Kīlauea.

Councilmember Cowden: Are you sharing the information about the increase of population in their age group? That could be the information that they did not get and why we are expanding beyond the eight thousand seven hundred (8,700). It could be that they did not hear it? I saw people change their countenance when they realized the impact and ask.

Mr. Peters: Yes, that is part of our presentation. I do realize that it may take a couple of visits to the centers and any events that are available for us to go out and speak. We have made ourselves available to go out and participate at the events in which the agencies are holding.

Mr. Lee: If there are community groups or associations that have an interest in having us come out to do a presentation, we would be open to entertain those ideas. The more community engagement that we have, the more exposure we have to our community and the people that we serve, the better off we will be. In the future, we look forward to those opportunities.

Councilmember Cowden: Thank you.

Council Chair Kaneshiro: Is there any further questions for the Administration? Councilmember Kuali'i.

Councilmember Kualii: I was at the Disabilities Legislative Forum the other night. I was talking to someone that seemed concerned. The way the paratransit is changing, they will no longer be a monthly pass. It would be books of ten (10). Although you say they are able to do more than ten (10), and it will be unlimited if it is for work or school, they will have to pay for the additional rides without having a monthly pass. This individual stated that they receive assistance. I am not certain if it is from the State of Hawai'i or a non-profit. They will pay for their monthly pass but they will not necessarily pay for the different system. Did you hear of these instances? He is basically saying that this will become a financial hardship for him to continue using the paratransit assuming he will be using it more

than ten (10) times in a month. Have you done away with the monthly pass for paratransit?

Ms. Mahikoa: Yes. That will be discontinued as part of the changes made that are necessary.

Councilmember Kualii: Are there any instances where you have paratransit users that have the monthly pass, who use it more than ten (10) times per month, and will need to continue using this pass in the future? If they use it thirty (30) times per month, they will have to pay three (3) times the price. You reduced the cost from forty dollars (\$40) to twenty dollars (\$20).

Ms. Mahikoa:

For fixed route?

Councilmember Kuali'i:

No. This is for the paratransit.

Ms. Mahikoa:

I want to ensure that we are clear with what

changes are being made.

Councilmember Kualiʻi:

I am talking about paratransit. He will not be

using the fixed route.

Ms. Mahikoa: As far as the ten (10) trip limit, that will be applied strictly to those individuals that are not registered the ADA requirements. It would be individuals registering based on age. The trip limit will be applied strictly to those individuals.

Councilmember Kuali'i: If he is older than sixty-five (65) but not eighty-five (85), he does not have the special paperwork from the doctor that states he is purely disabled to only use paratransit, he has a choice, and should try to use the fixed route.

Ms. Mahikoa: Ideally, any person who is able to use the fixed route, should utilize fixed route. We will be refining the system to determine those individuals who are unable to utilize fixed route, should then be utilizing paratransit service.

Councilmember Kuali'i: If he wants to continue to utilize paratransit, he would need to go through the assessment in order to get that determination.

Ms. Mahikoa:

That is correct.

Councilmember Kuali'i:

Okav.

Council Chair Kaneshiro:

Councilmember Cowden.

Councilmember Cowden: I have a follow up to that which is specific to foster grandparents. The Federal Government pays for their monthly bus passes. For a number of them, it is fine being that they use fixed route. For those who are in a wheelchair or a walker, (Inaudible) is not going to pay them. When they do the foster grandparent program at our public schools, it is a big service to everyone and service across the generations. The question that I have is if there is a special sticker that we are able to put on the monthly pass to allow this for the Federal Government to continue paying for it? Is there a way to create a way to have the Federal Government to purchase the coupon books for the paratransit bus? something that we are able to do so those foster grandparents who are in a wheelchair are not spending money to go to work? Although it is volunteer work, they are helping us and making a really big difference. Répondez S'il Vous Plaît (RSVP) is another example. They really contribute a lot. When working with the resilience group and everywhere else, the importance of having a caring adult should not be underestimated for some of our "At-Risk" children. I noticed disappointed people on a limited income that may have to make the choice to stop helping. That could be something that we are able to give a little deeper thought towards especially if we are able to have the government pay for those coupons. There must be a way to get around that. Thank you.

Ms. Mahikoa: We can certainly explore that.

Council Chair Kaneshiro: Is there any further questions? Councilmember Kuali'i.

Councilmember Kuali'i: First, I would like to thank you for providing information regarding what I have asked about at the last meeting regarding a possible discount category for low-income residents. It has become very clear based on some of your answers that although you sell these bus passes to non-profit organizations who are possibly helping low-income people, you are basically selling them the bus passes.

Ms. Mahikoa: That is correct.

Councilmember Kuali'i: You are actually selling them at the regular price.

Ms. Mahikoa: That is correct.

Councilmember Kuali'i: So, it is forty dollars (\$40) for a monthly bus pass and four hundred dollars (\$400) for an annual bus pass.

Ms. Mahikoa: That is correct.

Councilmember Kualii: The data you provided me for one (1) year was basically the sales data of the bus passes that you sell to the different organizations. Do you have the same data for multiple years? Am I able to get the data for the past

(2) years? I am going to try to follow up with some of these organizations to get the information that you did not have. I want to know if we are reaching the people that need the help and to see if there is no need there. At a minimum, are you able to provide two (2) more years in addition to the information that you have already provided?

Ms. Mahikoa: We can assemble that.

Councilmember Kualii: You gave me information from July 1, 2018 through June 30, 2019. I want to mention that it is a bit significant. There is sixteen (16) different non-profit organizations listed. From the sixteen (16) agencies in the last fiscal year, they purchased eight hundred ninety-one (891) monthly bus passes, and sixty-six (66) annual bus passes. The monthly bus passes totaled thirty-six thousand dollars (\$36,000), and the annual passes totaled twenty-six thousand dollars (\$26,000).

Ms. Mahikoa: That is correct.

Councilmember Kualii: Basically, we are selling it directly to them. We are not in any way supplementing or assisting. The information I primarily want to follow up with them on is if they are helping all the people that need help, or do they have a waitlist. If they do, maybe we should try to help with that because that would increase our ridership.

Ms. Mahikoa: In saying that we are not supplementing, I believe...

Councilmember Kuali'i: By supplementing, I am meaning subsidizing.

Ms. Mahikoa: Subsidizing the cost of the pass.

Councilmember Kuali'i: Charging them only thirty dollars (\$30) instead of forty dollars (\$40), and a discount. Some of them are actually buying in bulk, if you will. The State of Hawai'i Department of Human Services (DHS) bought three hundred ten (310) bus passes. That is in the course of a year, that is not per month. Easter Seals Hawai'i bought thirty-six (36) annual bus passes for a price tag of fourteen thousand four hundred dollars (\$14,400). I said supplementing but I meant subsidizing. In other words, we gave them a discount. Assuming that they have a waitlist, they could buy more and give to more people. We have no idea who they are helping, what the numbers are, and what the need is. I will follow up with that and I will work with you at the same time. Thank you.

Council Chair Kaneshiro: Is there anyone else? If not, thank you.

Ms. Mahikoa: Thank you.

Council Chair Kaneshiro: Is there anyone wishing to testify on this item?

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Seeing none. Is there any final discussion from the members before we take a vote? Councilmember Evslin.

Councilmember Evslin: I am in full support of this. I think it is a really big credit to the Transportation Agency with a comprehensive proposal which ends up raising prices that I do not believe we received any negative testimony on. It is a reflection of the outreach that they have done for the past years for it to get to this point. I appreciate the work that they have done. I would also like to say that I will not vote in support of any proposal which seeks to increase fairs for our mainline routes. I want to be clear that this is not even close to what this is doing, this is the exact opposite. The point is really to incentivize our mainline fixed route by decreasing bus pass prices significantly across the board, and to ensure that our paratransit is available to those in need. I feel that the intent is really good here and I fully support the work of Transportation Agency.

Council Chair Kaneshiro: Is there anyone else? Councilmember Cowden.

Councilmember Evslin: I am sorry, I would like to point out one more thing. In the information that they have provided to us requested by Councilmember Kuali'i which is the list of providers that are likely helping low-income people to get bus passes. I would like to share a few organizations for the people who are looking to get a pass for a discounted rate. The major providers here are the State of Hawai'i DHS, Catholic Charities of Hawai'i, State of Hawai'i Judiciary, State of Hawai'i Education, and the State of Hawai'i First-To-Work. There are a lot of passes out there that are going to those in need, and there are a lot of resources out there.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I am certainly going to support this. I appreciate all of the hard work. One of the reasons that I am very comfortable supporting this is because when there are people impacted by these issues, I have full confidence that all of you will work with a spirit of compassion to be able to address this. The entire time I have worked the Department of Transportation, it has been really clear that you have concern for your clients. Being able to continue to serve the people as best as you possibly can is at the forefront of your intentions. When I hear issues arise, I will continue to work with you on the issues that we are able to address.

Council Chair Kaneshiro: Is there anyone else? I will be voting in support of this. Councilmember Evslin and I asked questions regarding the net effect changes in fair rates and the types of cost-savings for when the Short Range Transit Plan Phase II is completed. I am happy to announce the Department of Transportation did get back to us in saying, "The propose increases to bus fares on

both paratransit and fixed-route service are anticipated to be nearly equally offset by the discounts proposed to incentivize the use of fixed-route service for paratransit registered riders, seniors, and youth." I will say to the public, if there has been any change, please reach out to the Department of Transportation. Talk to them about your individual situation. They may be able to provide you with help regarding a discounted rate or if you fit into any of these categories that we have. part of the conversation was the type of cost-savings that we were going to see. They did say, "They anticipate a reduction in paratransit trip demand by about twenty percent (20%). We knew that they paratransit was costing us the most for the "They anticipate to see a savings of three hundred thousand dollars (\$300,000) a year. The increase capacity that the Transportation Agency is seeking to provide with these savings as well as the efficiencies and service reap through the completion of the consultants run cut, will be aligned with the recommendations for additional fixed-route services included in the Short Range Transit Plan." This is exactly what we asked for. To look at your system, see what type of efficiencies you have, see where you are able to cut cost, and to do additional services. At the end of the process, come back to us to let us know what else you need to make our service more efficient. I am happy to say that we did not spend any more money for any of these changes. I look forward to the changes. I am happy that Transportation is taking a recommendation in becoming more efficient in the way they do their operation. We will hopefully be able to see some of the progress as we move forward. With that, can I get a roll call vote?

The motion to approve Bill No. 2758, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR APPROVAL: Brun. Chock, Cowden, Evslin,

Mr. Sato: Six (6) ayes.

Council Chair Kaneshiro: Motion passes.

ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 2:08 p.m.

Respectfully submitted,

JADEK FOUNTAIN-TANIGAWA

County Clerk